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In the United States District Court for the Eastern District of Louisiana, New Orleans Division
No. 30439

CRIMINAL DOCKET DIVISION A

Title of case	Attorneys
THE UNITED STATES vs. RAYMOND JOSEPH DUVERNAY *INDICTMENT* FAILURE TO COMPLY WITH SELECTIVE SERVICE DIRECTIVES (Vio: 50 App. USC 462) 1 Count	*For U.S.:* Louis B. Merhige Asst. U.S. Attorney Frederick W. Veters Asst. U.S. Attorney *For Defendant:* Bruce C. Waltzer, Trial Atty. SMITH, WALTZER & JONES 1006 Baronne Building By: Benjamin E. Smith, T. A. Tel.: 525-0606

Statistical Record	Costs	Date	Name or Receipt No.	Rec.	Disb.
J.S. 2 mailed J.S. 3 mailed Violation Title Sec.	Clerk Marshal Docket fee	9-6-66 9-7-66	Smith, Waltzer CD #19	5.00	(Appeal) 5.00

Date 1966	Proceedings	
6/16/66	Flg. INDICTMENT	1
6/22/66	Entg. ARRAIGNMENT. Plea of NOT GUILTY entered. Deft. GRANTED ten (10) days within which to file pleadings. ORDERED by the Court that deft. be placed in custody until bond is made. Ent. 6/27/66.	2
7/27/66	Flg. motion of deft., to quash Bill of Indictment; notice of motion fixed for hearing on Wed., Aug. 3, 1966, at 2:00 P.M.; memorandum in support of mtn., annexed.	3
7/29/66	Flg. motion of U.S.A. for, and ORDER (H.W.C., 7/29/66) that the hearing on deft.'s motion to quash bill of indictment be CONTINUED from Wed., August 3, 1966, to Wed., Aug. 10, 1966, at 2:00 P.M. Ent. 8/1/66. Issg. notice.	4
8/10/66	Flg. Government's motion in opposition of defendant's motion to quash the indictment; memorandum in opposition to motion to quash, annexed.	5
8/10/66	Entg. HEARING, on motion of deft. to quash bill of indictment and to dismiss; and on motion of the U.S. in opposition to deft.'s motion to quash the indictment. Argument. Witness called and testimony heard on behalf of deft. ORDERED by the Court that motion to quash and to dismiss is DENIED. FURTHER ORDERED that trial is SET for Tues., Aug. 30, 1966, at 10:00 A.M. Ent. 8/18/66. Issg. notice.	8
8/ 6/66	Flg. motion of deft., for new trial; memorandum annexed; Notice of motion fixed for hearing on Wed., Sept. 7, 1966, at 2:00 P.M. En	12
8/30/66	Entg. cause came on this day for trial, by the jury. Counsel for deft. requested that the jury panel be excluded from Courtroom so that preliminary matter might be taken up with the Court, same being GRANTED by the Court. Witnesses called and testimony heard. Jurors called, sworn. Witnesses called and testimony heard. Argument. Verdict of the jury, GUILTY. The Court ORDERED that the verdict be recorded. On oral motion of counsel for deft., the Court GRANTED a CONTINUANCE for sentencing. ORDERED by the Court that new bond of deft. be set in amount of $5,000.00 and that deft. not be allowed to sign his own bond. Deft. was remanded. Ent. 9/7/66.	13
9/ 6/66	Flg. Notice of Appeal, by defendant, from the verdict and judgment of August 30, 1966.	14
9/ 7/66	Flg. & Entg. Judgment and Commitment. (Defendant committed to custody of the Atty. General or his authorized representative for imprisonment for five (5) years). Sgd. (H.W.C.) 9/7/66. Ent. 9/9/66.	15
	Issg. copies to U.S. Marshal and U.S. Atty.	

In the United States District Court for the Eastern District of Louisiana, New Orleans Division

[File endorsement omitted]

Docket No. 30439
VIO: 50 App. USC 462

UNITED STATES OF AMERICA

vs.

RAYMOND JOSEPH DUVERNAY

INDICTMENT FOR FAILURE TO COMPLY WITH SELECTIVE SERVICE DIRECTIVES—FILED JUNE 16, 1966

The Grand Jury charges:

On or about the 20th day of May, 1966, in the New Orleans Division of the Eastern District of Louisiana, RAYMOND JOSEPH DUVERNAY wilfully and knowingly did fail and neglect to perform a duty required of him under and in the execution of the Universal Military Training and Service Act and the rules, regulations, and directions duly made pursuant thereto, in that he did fail, neglect, and refuse to comply with an order of his local board to submit to induction into the Armed Forces of the United States; all in violation of 50 App. USC 462.

A True Bill:

T. R. KENNEY,
Foreman.

/S/ LOUIS B. MERHIGE,
Assistant United States Attorney

We the jury find the defendant Guilty.

JOHN F. CADO,
Foreman,
August 30, 1966.

MINUTE ENTRY:
June 22, 1966
CHRISTENBERRY, J.

Division "A"
No. 30439
Criminal

UNITED STATES OF AMERICA
versus
RAYMOND JOSEPH DUVERNAY

This cause came on this day for Arraignment.

PRESENT: Louis B. Merhige, Esq.
Assistant U.S. Attorney
Bruce C. Waltzer, Esq.
Attorney for Defendant

Defendant, Raymond Joseph Duvernay, waived reading of Indictment, and entered a plea of NOT GUILTY.

Defendant Duvernay was granted ten days within which to file pleadings.

IT IS ORDERED BY THE COURT that defendant be placed in custody until bond is made.

In the United States District Court, Eastern Division
Louisiana, New Orleans Division

Docket No. 30439 Division "A"

[Title omitted in printing]

MOTION TO QUASH BILL OF INDICTMENT—FILED JULY 27, 1966

And now into court through undersigned counsel comes the defendant herein, Raymond Joseph DuVernay and in answer to the Bill of Indictment brought against him seeks to quash said bill and in support thereof avers that:

1) Said Bill of Indictment seeks to charge this defendant with a violation of the Universal Military Training and Service Act of 1948 (50 App. USC § 462) which charge is an unconstitutional and arbitrary application of said act, sought at a time when:

a) The United States is not presently in a state of war;

b) The induction of the defendant into the armed forces would require that he engage, if ordered in armed conflict while this nation is not in a state of war pursuant to the Constitution of the United States;

c) Engagement in armed conflict while this nation is not in a state of war would possibly subject the defendant to prosecution as an accessory or principal for crimes described and defined by Treaties of the United States as crimes against humanity or war crimes.

d) Induction into the Armed Forces of the United States could and would require defendant, if ordered, to participate in engagement in Armed Conflict in the Southern Regrouping Zone of Vietnam as defined in Chapter I of the "Agreement on the Cessation of Hostilities in Vietnam" (July 20, 1954) which would be in violation of the Treaty of commitments of United States as contained in:

1) The Nuremberg Convention of 1946.

2) The Charter of the United Nations (June 26, 1945)

2) Said Bill of Indictment seeks to charge this Negro defendant with a violation of Sections of the Universal Military Training and Service Act of 1948 (50 App. USC § 462) insofar as defendant was selected and ordered to report for induction by a board from which members of the Negro Race have been systematically excluded and/or limited.

Wherefore defendant prays that this Bill of Indictment be dismissed and that he be discharged without date.

SMITH, WALTZER & JONES

/S/ BENJAMIN E. SMITH,

Counsel for Defendant,

1006 Baronne Bldg.

New Orleans, La.

[Certificate of service omitted in printing]

In the United States District Court for the Eastern District of Louisiana, New Orleans Division

Criminal Docket No. 30,439–A

[Title omitted in printing]

[File endorsement omitted.]

GOVERNMENT'S MOTION IN OPPOSITION OF DEFENDANT'S MOTION TO QUASH THE INDICTMENT—FILED AUGUST 10, 1966

Now into Court, through undersigned counsel, comes the Government in opposition to the defendant's Motion to Quash the pending indictment in this matter and avers that:

I. The question of the Legality of the Vietnamese action by the United States is not justifiable in this forum;

II. The Nuremberg Charter is inapplicable to the defendant's defense;

III. There has been no systematic exclusion of Negroes from Local Board 42 of the Selective Service System in Louisiana; and further, this defendant has suffered no discrimination through the application of the Universal Military Training and Services Act.

WHEREFORE, the Government prays that the defendant's Motion to Quash the said indictment be denied, and further, that this Honorable Court fix this matter for trial at its earliest convenience.

/S/ LOUIS B. MERHIGE,
Assistant United States Attorney.

[Certificate of service omitted in printing]

In the United States District Court, Eastern District of Louisiana, New Orleans Division

No. 30439 Criminal Docket Section "A"

Proceedings taken in the above numbered and titled cause on Wednesday, August 10, 1966, in open court, The Honorable Herbert W. Christenberry, Judge, presiding.

TESTIMONY OF COL. DOUGLAS C. PRITCHETT

[2] Col. DOUGLAS C. PRITCHETT, after first being duly sworn, testified as follows:

Examination by Mr. SMITH:

Q. Mr. Pritchett, what is your present occupation?

A. I am attorney-adviser for the Selective Service System in Louisiana.

Q. How long have you been the attorney-adviser for the Selective Service System?

A. About three-and-a-half years.

Q. Are you familiar with the operations of Local Board No. 42?

A. Well, I am not intimately acquainted with the operations of Board 42; I am a member of the staff of State Headquarters.

Q. How long have you been a member of the staff of State Headquarters?

[3] A. Approximately three-and-a-half years.

Q. Before that, what did you do, sir?

A. Before that I was on active duty in the Marine Corps.

Q. Now, in connection with your job as staff attorney, or chief attorney, do you have occasion to meet with members of Local Board 42?

A. I have never met with members of Local Board 42.

Q. So that if you have never met with them, you wouldn't know them, is that right?

A. That is right. I wouldn't know them.

Q. You don't know whether there are any Negroes on that Board, do you, sir?

A. I do not.

Q. You don't know if there have been any Negroes on that Board, do you?

A. I do not.

Q. The members of that Board are selected by nominations given to the President by the Governor of the State, would that be correct?

A. Regulations provide that the Governor make recommendations and the President appoints.

Q. How many members are on this Board presently?

A. Five.

Q. Do you know how many members have served as members in the past five years?

[4] A. Well, sir, I have the records that go back to 1948.

Q. That would include the past five years?

A. Yes, sir.

Q. Have you been able to determine how many members have served within the past five years?

A. Yes, sir. In the last five years, 1966 back to 1961, right?

Q. Right.

A. Well, let's put it this way. One of the present members, and I am talking about the present membership of the Board now, one of the members of that Board was appointed in 1956, one in 1962, one in 1963, one in 1965, and one in 1966.

Q. Five members in all?

A. That's five, yes, sir; that's the present membership of the Board.

Q. Right.

A. Another member was appointed back in 1957, and he went off the Board in '66. Another member was appointed in 1961. He went off in 1965. Another one was appointed in 1951. He went off in 1963. Then there were three members that were appointed back in 1948. All three of these are [5] now dead. One of them died in 1952, one in 1959, and the other in 1962.

Q. That would cover the preceding five years, is that right?

A. Yes, sir.

Q. Do you have all the names of those members?

A. Yes, sir.

Q. Do you know whether or not any of those persons were of the Negro race?

A. I do not know whether they were or not.

Q. Is there any place on their application that would show race or color in connection with the recommendation made by the Governor?

A. No, sir.

Q. Is all the information filled out on the applications before these men are appointed, to your knowledge?

A. Yes, sir.

Q. Do the applications that are filled out by the proposed inductees that are required to register with the Board contain a designation of race?

A. No, sir.

Q. There is no classification on any of these inductees' records as to whether they are of one race or another?

A. At the time they are filled out? At the time they [6] register?

Q. Yes.

A. No, the race designation of an inductee does not get into the registrant's file when he initially registers. The race desig-

nation gets into the registrant's official file, his Selective Service record, after he has been examined at the Armed Forces Examination and Separation Station to determine whether he is acceptable for service in the military.

Q. And it is following this examination that the order for induction is issued or not issued, is that right?

A. That's right.

The COURT:

Q. Until they are examined, there is no notation of race made, is that right?

A. That's right, sir.

Mr. SMITH:

Q. There is a final classification made after his physical examination, is that not true?

A. A final classification?

Q. Yes.

A. Well, there is not necessarily another classification then. It depends upon whether he has been found [7] acceptable or not acceptable, as to whether or not there is another classification immediately following.

Q. Do you mean a physical classification?

A. Well, physically, mentally, or morally.

Q. So that the final consideration comes after the physical examination, is that right?

A. Well, as I just said, not necessarily another classification following that.

Q. I said there is a final consideration after the physical examination; wouldn't there have been?

A. Yes.

The COURT:

Q. If a man is ordered to report for examination, and he passes, he is then ordered inducted, is that right?

A. That would be the next thing, Your Honor, in connection with the order in which the regulations require that they be selected.

Mr. SMITH:

Q. In connection with the names of persons that have been recommended by the various Governors of the State, do you have any records or any information as to whether they were all appointed?

A. Well, sir, I don't have that information with me, [8] if it is available. I don't know of my own knowledge about that.

Now, I do have the records of everyone who was appointed and who did serve.

Q. Did they present their commissions to the Board upon having been appointed to it by the President?

A. Upon being appointed by the President, they signed a waiver of pay and an oath of office.

Mr. SMITH. I think that's all I have to ask this witness.

The COURT. You may step down.

Mr. SMITH. Your Honor, we take the position that this Board functions as any other determinative body, much along the line of a jury, in that members of the Negro race should not be excluded from such a body, which is dealing with applicants that are Negroes, and we think it has been shown here that this has been the case with this Board.

The draft statute itself, Your Honor, states that there shall be no discrimination as to race or religion as to the selection of persons to be drafted, and here we have the case of the Draft Board being in existence for some ten or fifteen years, and with all the persons appointed by the [9] President, after being nominated by the Governor, being of the white race, which we contend is not in compliance with the due process of law under the Fifth Amendment.

The COURT. Does the government know whether all the Draft Board members are white?

Mr. MERHIGE. Your Honor, I don't know.

The COURT. I find that surprising.

Mr. MERHIGE. I might say this, Your Honor, I have inquired and been told that they have no Negro members now sitting on the Board, and they have not sat on the Board within five years.

The COURT. All right.

Mr. SMITH. If the Court please, before I brought this motion to quash the indictment, I made inquiry also, and I am prepared to back up that statement, that there has never been a Negro sit on Local Board 42, and I would like to ask the Court's indulgence in order that I might have time to file and make as [10] part of the record the necessary affidavits of proof in that connection.

The COURT. You may do that. I assumed you would want to do so.

The Court rules that your motion is without merit, and is denied. The case is set for trial for August 30.

I might say that this will not preclude your filing any affidavits you wish to file, and I might also state for the record that from what I have heard here today, I will assume, unless evidence is produced to the contrary, that none of the members of this Board are of the Negro race.

Mr. SMITH. Thank you, Your Honor.

The COURT. Court will stand recessed.

MINUTE ENTRY:
August 10, 1966
CHRISTENBERRY, J.

Division "A"

Criminal Docket No. 30439

[Title omitted in printing]

This cause came on this day for hearing on motion of defendant to quash bill of Indictment and to dismiss; and on motion of the United States in opposition to defendant's motion to quash the Indictment.

PRESENT: Louis B. Merhige, Esq.
Assistant U.S. Attorney
Benjamin E. Smith, Esq.
Attorney for Defendant

Argument.

The following witness was called and testified on behalf of the defendant:

Douglas Prichard, Sworn by Deputy Clerk.

IT IS ORDERED BY THE COURT that the motion of defendant to quash Bill of Indictment and to dismiss be, and the same is hereby, DENIED.

IT IS FURTHER ORDERED that trial in this matter be, and the same is hereby, SET for Tuesday, August 30, 1966, at 10:00 o'clock A.M.

FREDERICK W. VETERS, Esq.

[1] In the United States District Court, Eastern District of Louisiana, New Orleans Division

Section "A"

Criminal Docket No. 30439

UNITED STATES OF AMERICA

vs.

RAYMOND JOSEPH DUVERNAY

TRANSCRIPT OF TRIAL—AUGUST 30, 1966

APPEARANCES:

LOUIS B. MERHIGE and GENE S. PALMISANO, Assistant United States Attorneys.

BENJAMIN E. SMITH, Counsel for the Defendant.

[2] The COURT. Are the parties ready?

Mr. MERHIGE. The Government is ready, Your Honor.

Mr. SMITH. We are ready, if the Court please. However, before we proceed, we would like to approach the bench in connection with a preliminary matter.

The COURT. Very well.

(Discussion held at the bench between Court and Counsel.)

The COURT. Have the jurors leave the court room, please. All jurors are asked to leave the court room for a few moments. Don't go far. There is a preliminary matter to be taken care of, and then you will be called back. All right, you may step out in the hall.

(Jury panel leaves the court room.)

The COURT. All right, you may proceed.

Mr. SMITH. Pursuant to my request to the Court, Your Honor, we are ready to proceed.

[3] The COURT. All right. Now, the Court understands that this examination of these witnesses that you are calling is in connection with your motion to quash the indictment, is that right?

Mr. SMITH. Yes sir, that's right.

The COURT. Which the Court has already overruled.

Mr. SMITH. Yes sir, that's right, but this is for purposes of perpetuating my record, Your Honor.

The COURT. All right, you may proceed. Now, as I understand it, any evidence that may be adduced during the trial of the case will be reserved until that time. I don't see any reason for going through this man's entire record at this time in connection with your motion. Is that agreeable?

Mr. SMITH. That's correct, if the Court please. I am just going to ask a few questions of each witness in connection with this motion that I have filed.

[4] The COURT. I understand. All right, let's proceed.

Mrs. CECILE CALMES, after first being duly sworn, testified as follows:

Examination by Mr. SMITH:

Q. Please state your full name, ma'am.

A. Mrs. Cecile Calmes.

Q. Mrs. Calmes, as I understand it, you are the Clerk of Draft Board No. 42, involved in this case, is that correct?

A. I am, yes sir.

Q. Did you have occasion to handle the file of Raymond Joseph Duvernay, the defendant here?

A. I did.

Q. Now, I take it that when a young man reaches the age of eighteen or nineteen, when he is drafted, he is then registered with your board if he is in your jurisdiction, is that right?

A. That's right.

Q. Then he is given a draft classification under the Selective Service Act, is that correct?

A. After he is registered, yes sir.

Q. After he has registered?

A. Yes sir.

[5] Q. Now, who determines that classification, what it will be?

A. The Board.

Q. Do they sit as a Board and decide on each case?

A. That's right.

Q. And I take it they also sit on exemptions and the qualifications of each individual person in deciding what classification they should have, is that correct?

A. That's correct.

Q. And they are the ones that hand out the deferments, is that correct?

A. That's right.

Q. And they do this by following the directions given them by the President of the United States, would that also be correct?

A. Yes, in accordance with the regulations of the Selective Service Act.

Q. And they have the job of determining whether or not these rules and regulations of the President apply or do not apply in any one particular case, is that right?

A. That's right.

Q. Now, from this Board's decision on each individual case, there can be an appeal taken, can there not?

A. Yes, within a certain time.

[6] Q. Now, does the Board vote on these determinations that they make, as to whether a person should be deferred or not?

A. I'm not sure I follow your question.

Q. In other words, I am simply asking you, Mrs. Calmes, whether the Board votes like a body of people?

A. Yes, they have what is known as a forum or meeting where they consider each file, and they vote on each one.

Q. Must the vote in each instance be unanimous, Mrs. Calmes?

A. No, not necessarily. Sometimes one or two may dissent.

Mr. SMITH. That's all the questions I have. Thank you, ma'am.

Mr. MERHIGE. The Government has no questions, Your Honor.

The COURT. All right. Call your next witness.

Mr. SMITH. If the Court please, in order to obviate the necessity of calling other witnesses in connection with my motion, we are prepared to stipulate that the other witnesses subpoenaed with relation to this particular motion alone; that if they were called to the stand, they would testify generally along the same line that [7] this witness has testified.

The COURT. Is that agreeable to the government?

Mr. MERHIGE. Would Your Honor bear with me a moment?

The COURT. Yes.

Mr. MERHIGE. Your Honor, at this point the Government will stipulate that the rest of the Board would testify as this witness has testified.

The COURT. Very well. Call those gentlemen back in.

(Prospective witnesses with regard to motion to quash returned to the court room.)

The COURT. Is either side going to need these members of the Board during the course of the trial?

Mr. SMITH. I will need Mrs. Calmes for my cross examination, under cross examination, if the Court Please.

The COURT. All right, she will remain.

Mr. MERHIGE. May Counsel approach the bench, please?

[8] The COURT. All right.

(Conference held at the Bench between Court and Counsel.)

The COURT. All right, call the jury.

(Jury empanelled and opening statements made to the jury.)

The COURT. All right, call your first witness.

Mr. MERHIGE. At this time, Your Honor, the Government moves to strike all the testimony that was elicited from the witness on cross examination relative to the Board's classification procedures on the ground that this was not relative to the issue on trial here today. This issue could have been raised by the defendant at a prior time if he had taken an appeal from the Board's position, and further it is not competent, in that he did not exhaust his remedies.

The COURT. Overruled.

DIRECT EXAMINATION

Mr. MERHIGE:

Q. Would you state your name and occupation, please, ma'am?

[9] A. Mrs. Cecile Calmes, clerk with the Selective Service Board, No. 42.

Q. Where is that Board located, Mrs. Calmes?

A. In the Post Office Federal Building.

Q. Is that here in New Orleans, Louisiana?

A. New Orleans, Louisiana, that's right.

Q. As clerk of Local Board 42, Mrs. Calmes, do you have control and jurisdiction over the records of all the registrants that are subject to that Board?

A. Yes sir, I do.

Q. From the records of that Board, can you tell the members of the jury if one Raymond Joseph Duvernay is registered with that Board?

A. Yes sir, he is.

Q. Is that person here in the court room today?
A. Yes sir, he is.
Q. Do you recognize him?
A. I recognize him, yes.
Q. Would you identify him, please, ma'am?
A. He is the gentleman sitting next to the lawyer.
Mr. MERHIGE. Let the record indicate that the witness has designated the defendant, please.
Q. Mrs. Calmes, as clerk of that Board, is it your duty to register and to oversee the registering of all [10] registrants that come in within that jurisdiction?
A. Yes sir, it is.
Q. Did you have occasion to register Mr. Duvernay for that Board?
A. Yes sir, I did. I registered Mr. Duvernay.
Q. I show you, Mrs. Calmes, a document marked G–1 for identification, and ask you if you identify this?
A. Yes, that's the registration card of Raymond Joseph Duvernay.
Q. Is that the card that Mr. Duvernay, as well as all other registrants, submit when they come in to register?
A. Yes sir.
Q. At what age are they required to come in and so register, Mrs. Calmes?
A. At the age of eighteen; that's the Federal law.
Q. And is that Mr. Duvernay's registration card?
A. That's Mr. Duvernay's card, yes sir.
Q. Have you ever seen that card before?
A. Yes sir, I have seen it before.
Q. Is that your signature at the bottom?
A. That's my signature at the bottom of the card, yes sir.
Q. I show you what is marked as Exhibit G–2 for identification purposes, and ask you if you will identify that for us, please, ma'am. Just tell the ladies [11] and gentlemen of the jury what that document represents.
A. That's a Selective Service Order to report for induction, addressed to Mr. Duvernay.
Q. And what's the date on that, Mrs. Calmes?
A. Mr. Duvernay was ordered to report for induction on May 20, 1966.
A. At what designated place, do you know?

A. Yes, the United States Army Recruiting Station, 2nd floor, Customhouse, 423 Canal Street, New Orleans, Louisiana.

Q. Mrs. Calmes, what date was that mailed to the defendant?

A. It was mailed to the defendant on April 13, 1966.

Q. And the reporting date was what date, please, from that?

A. May 20, 1966.

Q. Are you familiar with the regulations enough to know the prescribed minimum lapse of time to be allowed the defendant to comply with the notice to report? In other words, when must you notify the defendant?

A. The defendant has to be given ten days prior to reporting for induction, according to our regulations, but we usually give them practically a month, sometimes three weeks.

[12] Q. In this case it was a bit more than a month, from April 13 to May 20, isn't that right?

A. Yes sir.

Mr. MEI HIGE. Your Honor, at this time, the Government would offer both of these documents into evidence, being marked for identification G–1 and G–2.

The COURT. They may be admitted.

Mr. MERHIGE:

Q. Mrs. Calmes, do you in fact know that the defendant, Mr. Duvernay, did receive that order to report?

A. Yes sir, I do.

Q. How do you know this?

A. Because Mr. Duvernay reported to the office several days after he received it, and he presented the notice to me. He had it on his person.

Q. What were the circumstances which occasioned that, Mrs. Calmes?

A. He came to the office after he received the notice and advised me that he was seeking a deferment as being a student.

Q. Was he in fact a student then?

A. No, but he said he was planning to return to school in September of '66.

[13] Q. And at that time did you see the induction order in his possession?

A. Yes sir, he had it in his hand.

Q. He had it in his hand?

A. Yes.

Mr. MERHIGE. Your witness.

CROSS EXAMINATION

Mr. SMITH:

Q. Mrs. Calmes, this request that this man made for a deferment after he received this induction notice, that was not the first time that he made such a request of the Board, isn't that right?

A. You mean after he received the induction order?

Q. No, my question is was that the first time he had ever come to the Board requesting a deferment at all.

A. That he personally requested it?

Q. Yes.

A. I don't believe I understand your question.

Q. Had he not or had his mother not made other requests for deferment of this young man from the time he first entered the Selective Service System until now?

A. No, not to my knowledge. Do you mean did his mother request a deferment for him?

[14] Q. Let me ask it another way, Mrs. Calmes. I'm going to call your attention to what appears to me to be a portion of a record in which, for example, one document here is dated April 25, 1966, and it's a report of oral information, signed ostensibly by his mother, reporting to the Board, and requesting that a deferment be granted for her son because he was planning to go back to school, and in addition because he was the support for her and her six children.

A. No.

Q. Wait, let me show you the document.

A. She appeared at the office, Mr. Duvernay's mother, but she didn't make a request for anything. She was merely submitting this information. She was told that her son had been in and requested deferment to go to school.

The COURT. Let me see Counsel at the bench.

(Discussion held at the bench between Court and Counsel.)

The COURT. The Clerk will swear these witnesses.

(Mr. and Mrs. Duvernay put under oath by the Deputy Clerk.)

The COURT. All right, you are instructed not to talk about [15] this case with anyone except attorneys for either side. Step outside. All right, let's proceed.

Mr. SMITH:

Q. Now, Mrs. Calmes, you say that his mother did not request a deferment for him at a visit to Local Board 42?

A. No, she did not. She just appeared after he had been there.

Mr. MERHIGE: Your Honor, I don't see the relavancy of this. The mother is not on trial. The son is on trial. I don't know what relevancy it has.

The COURT: What's the purpose of this line of questioning?

Mr. SMITH: If the Court please, I think this is getting to the heart of the case. I am trying to determine if this Board's actions were arbitrary, or capricious, and this also goes to the veracity of the witness.

Mr. MERHIGE: But Your Honor, this is not a Board member; this is the Clerk of the Board. Counsel is apparently attempting to check her actions, and [16] not those of the Board.

The COURT: Well, I think the record speaks for itself.

Mr. SMITH:

Q. Now, Mrs. Calmes, you say that the lady didn't ask for a deferment for her son, is that right?

A. That's right. She appeared and gave information is all.

The COURT:

Q. I am trying to understand this. According to the testimony, this man was attempting to get a deferment in order to go to school, and yet he was seeking a deferment apparently about the same time to support this family of six children. Now, if he was going to do one, how could he do the other?

A. Those are the two grounds that he set out, Your Honor, and he made those requests at different times.

Q. But he made them, and not his mother?

A. Yes sir, his mother didn't do a thing when she came to the Board offices but give pertinent information about her son. She didn't request a deferment for him for any reason. Those were of his making.

The COURT. All right, proceed.

Mr. SMITH. If the Court please, I would like to offer, intro-[17]duce and file in evidence in connection with the testimony of this witness under cross examination, the document which she is holding in her hand.

The COURT. All right, let it be admitted.

Mr. SMITH:

Q. I am also going to show you, Mrs. Calmes, a copy of a report of oral information, dated April 15, 1966, which is part of the record furnished by the Government concerning a con-

versation with the registrant, and I ask you if this was signed by you?

A. That's correct, that was signed by me.

Mr. MERHIGE. May we see the document?

Mr. SMITH. Yes.

(Document shown to Mr. Merhige by Mr. Smith.)

Mr. MERHIGE. Thank you.

Mr. SMITH:

Q. Mrs. Calmes, I am going to show you now what purports to be a letter to the Local Draft Board No. 42, from the Social Welfare Planning Council, signed by Albert G. Rosenberg, Associate Executive Director, [18] dated May 12, 1966, relative to Raymond Duvernay and his employment status, and I am going to ask you if it is part of your duties and of the Board to receive this letter?

A. That's correct.

The COURT. Let me see it.

(Document submitted to the Court by Mr. Smith.)

The COURT. All right, you may proceed.

Mr. SMITH:

Q. Mrs. Calmes, I am going to ask you if you showed these three documents to the Draft Board?

A. That's correct.

Q. You did?

A. Yes sir.

Q. Did the Draft Board hold a meeting on this young man in connection with his request for a deferment?

A. Yes, they had the meeting. I don't recall the date.

Q. Maybe I can help you, Mrs. Calmes. Didn't you write to Mr. Duvernay, the letter being dated April 28, stating that the meeting was held by the Board on April 27; isn't that correct?

A. Yes, that's correct.

Q. That is a correct statement on that?

[19] A. Yes.

Q. Now, at the time the Board met on April 27, 1966, this was when they ordered a notice issued for the induction of this young man, isn't that right?

A. Not necessarily.

Mr. MERHIGE. If the Court please, I am going to object to that question, because that's not based on any facts that have been brought out in this case. Evidence has been introduced here that the order to report was dated April 13, and apparently

this Board didn't meet until the 27th, which was about two weeks later.

The COURT. What's the date on that letter?

Mr. MERHIGE. April 13, that's the date of the notice, Your Honor.

The COURT. The objection is sustained.

Mr. SMITH. If the Court please, I am going to offer, file, and introduce this document into evidence, and mark the same for identification Duvernay 4.

[20] The COURT. All right, let it be received.

Mr. SMITH:

Q. Mrs. Calmes, you did not then have this letter from Mr. Rosenberg before you wrote this letter of April 28, saying that the Local Board had considered some information given to them and that the man should report for induction; isn't that right? In other words, you didn't have this letter in front of you, and neither did the Board, wouldn't that be correct?

A. Do you mean the order of the Board for him to report for induction?

Q. Right.

A. No sir.

The COURT:

Q. Let me ask you this. When this man was notified to report for induction, was he given any information as to how much time he would have in which to appeal?

A. Oh, that's on the card, Your Honor.

Q. On the card itself?

A. Yes sir, on the card.

The COURT. All right, proceed.

Mr. SMITH:

Q. Mrs. Calmes, are minutes kept of Board meetings?

[21] A. Yes sir, minutes are kept of Board meetings.

Q. Where are they kept?

A. They are kept in the office.

Q. Do you keep them as the Clerk of the Board?

A. Yes sir, that's right.

Q. Are they available for production here, if any?

A. Yes sir, they are available.

The COURT. Do you mean the minutes concerning this registrant?

Mr. SMITH. Yes sir, Your Honor, that's what we want.

The COURT. All right, go ahead.

Mr. SMITH:

Q. They could be produced if necessary? That's the question.

A. Yes, they could be.

Mr. SMITH. No further questions.

The COURT. All right, you may step down.

Mr. MERHIGE. Pardon me, Your Honor, I have just a couple more questions to ask her.

The COURT. All right, just be seated.

[22] Mr. MERHIGE:

Q. Is there a procedure established, Mrs. Calmes, for taking an appeal from a classification pursuant to regulations?

A. Would you repeat that please? I don't think I followed you.

The COURT. Don't lead her, Counsel.

Mr. MERHIGE:

Q. Is there an appeal procedure appealing from a classification if a person feels that he should not be in that classification?

A. Yes, he has the right of appeal.

Q. Would that person also have a right to being helped as far as informing him of how to go about taking an appeal?

A. Yes sir. If he would request help, we would try to be helpful in every way.

Q. Did this man request any such help, or take any such appeal?

A. No sir. Mr. Duvernay never did request help on an appeal.

Mr. MERHIGE. No further questions.

The COURT. All right. Step down. Suppose we take a short [23] recess.

(Recess taken.)

The COURT. All right, you may proceed.

PHILIP J. PEKINS, after first being duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. MERHIGE:

Q. Will you state your name and rank, please?

A. Philip J. Pekins. I am a Specialist Fifth Class, United States Army.

Q. What are your duties there generally?

A. At the present time, sir, or at the time that this happened that is involved in this case?

Q. Well, let's say approximately May 20, 1966.

A. At that time I was in charge of administration work at the Induction Center.

Q. On or about that day, did anything of an unusual nature occur at the Induction Station?

A. Yes sir.

Q. Will you please state in your own words to the members of the jury what that was?

A. Yes sir. The man sitting over there——

Q. You are referring to the defendant, Mr. Duvernay?

[24] A. Yes sir, Mr. Duvernay.

Q. Are you acquainted with Mr. Duvernay, the defendant?

A. Yes sir.

Q. Continue, please.

A. Mr. Duvernay reported in the morning to me, the morning of that day, and we continued to process him, but when it came time for me to interview him, he informed me that he was not going to go into the Army. At this time, I turned him over to Lieutenant Harrington.

Q. Did he say why he was not going into the Army?

A. Well, in cases like that, I turn them over to Lieutenant Harrington.

Q. All right, after turning him over to Lieutenant Harrington, did Lieutenant Harrington speak to the man, confer with him?

A. Yes sir.

Q. After this conference, was the defendant then inducted?

A. No sir.

Q. How do you know this?

A. Lieutenant Harrington turned him back, told him to return to me.

Q. Was the defendant there, when this happened, when the lieutenant told you that?

A. Yes sir.

Q. All right, continue, please.

[25] A. He turned him back over to me, informing me that the man had refused induction, so I told him that there would be no further need for processing him, and I told him that he was free to go.

Mr. MERHIGE. Your witness.

Mr. SMITH. No questions.

Mr. MERHIGE. I call Lieutenant Keith P. Harrington.

Lieutenant KEITH P. HARRINGTON, after first being duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. MERHIGE:

Q. Will you state your name for the ladies and gentlemen of the jury, sir?

A. Lieutenant Keith P. Harrington, United States Army.

Q. What are your present duties, Lieutenant?

A. At the present time, my duties those of processing officer over at the Armed Forces Examining and Entrance Station, New Orleans, Louisiana.

Q. Lieutenant Harrington, were you so employed on May 20, 1966?

A. Yes sir.

[26] Q. Did you have occasion to meet this defendant in this matter, this man sitting here, Joseph Duvernay, on that date?

A. Yes sir, I did.

Q. Was it at that station?

A. Yes sir.

Q. Would you please describe the circumstances and the results of that meeting to the members of the jury, please?

A. Yes sir. On this date, Specialist Pekins, who at the time was the non-commissioned officer in charge of the induction area, turned over to me this man indicating that this defendant here was going to refuse to be inducted into the military service.

Now, at this time, I took the defendant back into our ceremonial room at the back of the station, and at this time I talked to the defendant for several minutes, explaining to him exactly what the possible penalties could be if a man refuses to be inducted, and when we had talked for that period of time, we both left the room.

Again I walked up to my desk, and on the way up to my desk, I asked Lieutenant Costa if he could take over my duties, my assignments, at the station, temporarily, and I inspected this man's particular [27] induction records, and again we walked back into the ceremonial room, and once in the ceremonial room at this time, I went through the oath of induction, the induction ceremony, and I proceeded up to the point where the man should have taken one step forward to indicate his acceptance and his willingness to go into the armed services,

and in this case, this man did not take that one step forward. At that time, I again sat down in the ceremonial room with him and read over again the regulations pertaining to penalties involved for refusing to be inducted and again I went up on the stage, and he stood in front of me, and we went through the induction ceremonies one more time, and again this man refused to be inducted. He got to that point, and he would not take the one step forward.

The COURT:

Q. This one step forward, what's the significance of that? Would you explain that to the jury?

A. Yes sir. The one step forward is itself actually the induction into the military service. That comes after the oath of induction is taken, and the next step is the step forward, which he refused to take.

Mr. MERHIGE:

Q. Did the defendant know this? Did he know the signifi- [28] cance of this step and what it meant to him if he did, and also if he didn't take this one step forward?

A. Yes sir, I explained it to him several times very carefully, and I'm sure he understood.

Q. You did apprise him of this and its significance?

A. Yes sir.

The COURT:

Q. You said you had a conversation with him when you brought him into the back? What was that conversation?

A. Well, sir, the text of the conversation was more or less, my questioning of him as to why he intended to refuse to be inducted, and explaining the penalties to him, and actually trying to get at the bottom of his purpose for refusing.

Q. Why did he tell you he was refusing to be inducted?

A. Sir, it was on the basis of more or less the rights of an individual, as far as his feelings were concerned, in other words, why should he be fighting in a foreign country when in this country there are many inequalities. That seemed to be his chief comment.

The COURT. All right, proceed.

[29] Mr. MERHIGE.

Q. Lieutenant Harrington, after you left the ceremonial room, as you have stated, and after attempting to induct this man twice, with his refusal each time, what did you then do?

A. Sir, upon leaving the ceremonial room, it was required that I complete a report on the man's refusing to be inducted into the service, so I had him to sit down at the desk in front of me, and I went over the requirements as far as the Army Regulations were concerned.

Now, one of the requirements is that if an individual refuses to be inducted into the armed services, he is to put in writing that he has refused to be inducted into the armed services, and in this case the defendant did so.

Q. I show you what has been marked for identification as Government Exhibit G–3 and ask you if you recognize this?

A. Yes sir.

Q. Is that your signature?

A. Yes, it is, sir.

Q. Is this the report which you just referred to?

A. Yes, it is.

Q. The second page of that states that this is his sig- [30] nature, and then there is a witness who also signed. Did you witness that signature?

A. Yes, sir.

Q. Did you see this statement being made and signed by the defendant?

A. Yes sir, the statement was signed at my desk.

Q. And the third page also signed by Raymond Duvernay, is that right?

A. Yes sir.

Q. Did you also see that signed?

A. Yes sir, I did.

Mr. MERHIGE. Your Honor, at this time the Government offers, introduces and files in evidence Government's Exhibit G–3.

Mr. SMITH. I have no objection.

The COURT. It may be received.

Q. After the defendant signed and delivered this statement to you, Lieutenant Harrington, what did you then do?

A. When I had completed the record, I turned him over to Specialist Pekins, who at that time released him from the building.

Q. To your knowledge, has the defendant ever been inducted?

[31] A. No sir.

Mr. MERHIGE. Your witness.

CROSS EXAMINATION

Mr. SMITH:

Q. Lieutenant, was Mr. Duvernay at that time given a physical examination?

A. Yes sir, he was.

Q. Did he submit without any trouble to that physical examination?

A. To the best of my knowledge, yes, he did.

Q. Was he then released?

A. I don't follow that, sir.

Q. Did he get a physical examination before this occurrence that you have described, or was that afterwards?

A. Oh, no, that was before.

Mr. SMITH. That's all, thank you.

The COURT. You may step down. Call your next witness.

Mr. MERHIGE. We call Lieutenant Costa.

[32] Lieutenant IGNATIUS J. COSTA, Jr., after first being duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. MERHIGE:

Q. Will you state your name, please, sir?

A. Lieutenant Ignatius J. Costa, Jr.

Q. Lieutenant Costa, were you at the induction station here in New Orleans, on May 20, 1966?

A. Yes sir, I was.

Q. Did anything unusual occur on that date?

A. Yes sir. Some time during the morning Lieutenant Harrington stopped at my desk on his way to the ceremonial room with an individual behind him, and asked me to assume his duties as processing officer.

Q. Is that individual present in this court room today?

A. Yes sir, he is.

Q. Will you identify him?

A. I believe he is sitting there with the blue shirt on, right there.

Mr. MERHIGE. Let the record show that the witness pointed to the defendant.

Q. Would you continue, please; what did you then do?

A. Well, I assumed the duties of processing officer, covering for Lieutenant Harrington.

[33] Q. Did you see the defendant and Lieutenant Harrington go in any particular area, or what did they do that you saw?

A. Well, about a half hour or forty-five minutes later he emerged from the ceremonial room with Duvernay and came over to my desk and informed me that this man, this defendant, had refused to be inducted, and to escort him into his office.

Q. At that time, did you escort him into his office?

A. Yes sir, I did.

Q. What transpired there, if anything?

A. Lieutenant Harrington proceeded to explain Army Regulation requirements concerning induction of personnel, and explained that a report would have to be made out, witnessed by three signatures, by military officers assigned there, and I was one of the officers that witnessed this statement.

Q. Did you see the defendant sign this statement?

A. Yes sir, I did, sir.

Q. I show you what has been introduced in evidence as Government's Exhibit G–3, and ask you if you can identify this, or any part of it?

A. Yes sir, this is the cover letter attached to the report, along with the statement by the defendant, and it of course has my signature.

[34] Q. And you say that includes the statement that the defendant made at the time he refused induction?

A. Yes sir.

Q. To your knowledge, was the defendant ever inducted into the armed forces?

A. Not to my knowledge, no sir, not at all.

Mr. MERHIGE. Your witness.

Mr. SMITH. No questions.

The COURT. You may step down.

Mr. MERHIGE. Your Honor, the Government has no further witnesses in this matter. The Government rests.

The COURT. You rest?

Mr. MERHIGE. Yes sir, we have no further evidence to produce.

The COURT. Are you ready to go forward?

Mr. SMITH. We are prepared to go forward, Your Honor, but the defense would like move the Court at this time to allow me to request the production of [35] the minutes of this Board, particularly those of the meeting of April 27.

The COURT. Can you get them?

Mr. MERHIGE. We'll see if we can get them, Your Honor, but Counsel has had ample time to get those in advance of trial, and we think that this request comes a little late.

The COURT. What's the purpose of these minutes of the Board?

Mr. SMITH. If the Court please, we would have asked for these minutes sooner, but this has just occurred to me in the light of testimony we have had here today. If it is too much trouble to obtain them, I will withdraw the request.

The COURT. Why don't you see if you can get them?

Mr. MERHIGE. The Government must object to this request, if the Court please, on the ground that these minutes are not relevant to this case before the Court.

[36] Mr. SMITH. It involves a question of classification, if the Court please. I thought they would be in this file, but I've looked carefully and I don't see them there.

Mr. MERHIGE. Your Honor, the minutes of a meeting of a Selective Service Board does not relate to each specific individual. It's a meeting where a great number of these cases are handled at times, and that's all that the minutes really will reflect.

The COURT. Aren't the minutes concerning this registrant in his file?

Mr. SMITH. Your Honor, they are not in this file, to my knowledge, and I think we're entitled to see them.

The COURT. Well, let's get them. In the meantime, let's get on with this case. You can get them, can't you?

Mr. MERHIGE. Yes sir, Your Honor.

[37] The COURT. Very well, let's proceed.

Mr. SMITH. In addition, if the Court please, I will offer, introduce, and file in evidence, two further documents disclosed by the file furnished to me by the Government, one a report of oral information, dated April 15, 1966, and I would like to mark that for identification Duvernay 5, and the other is a letter from Mrs. Cecile Calmes, dated May 16, 1966, and signed by Mrs. Calmes, and I mark that for identification as Duvernay 6.

The COURT. It may be received.

Mr. SMITH. At this time, if the Court please, we call Raymond Joseph Duvernay to the stand.

RAYMOND JOSEPH DUVERNAY, after first being duly sworn, testified as follows:

Mr. SMITH:

Q. State your name to the jury, please?

A. Raymond Joseph Duvernay.

[38] Q. And your age?

A. Twenty.

Q. And where do you presently reside?

A. 2006 Lapeyrouse.

Q. Where were you born?

A. Monroe, Louisiana.

Q. Where did you receive your schooling?

A. New Orleans.

Q. Grammar and high school?

A. Grammar school and high school.

Q. When did you finish high school?

A. 1965, June of 1965.

Q. Now, before you finished high school, had you reached the age of eighteen?

A. Yes, I reached the age of eighteen in '64.

Q. What was your birth date?

A. January 20.

Q. January 20, 1964?

A. Right.

Q. Did you then register with the Selective Service?

A. I did.

Q. Was that registration with Local Board No. 42?

A. It was.

Q. Did you receive a classification at that time?

A. Yes sir, I did.

[39] Q. What was that classification?

A. A classification of 1–SH.

Q. That's a student classification?

A. Yes.

Q. But you had not finished high school?

A. That's right.

Q. Mr. Duvernay, what was the next thing that happened to you, after you finished high school?

A. I entered, enrolled in LSUNO, and I received a classification of 2–S.

Q. And that was in September of 1965, you say?

A. Yes sir.

Q. How long did you continue your studies at LSUNO?

A. Until shortly after mid-semester.

Q. Then what did you do?

A. Then I retired from school, and I tried to enlist in the Army.

Q. What happened when you tried to enlist in the Army?

Mr. MERHIGE. If the Court please, I object to that question because I don't think it's relevant to this case.

The COURT. I sustain the objection.

[40] Mr. SMITH:

Q. All right, what was the next thing that you did? What were you doing when you finished your schooling? Were you working?

A. I was working for the Housing Authority as a laborer, and that was at the St. Thomas Project, and after that I was employed by the Social Welfare Planning Council, and I was assigned to the Lower Ninth Ward.

Q. What was that about where you were working?

A. In the Lower Ninth Ward. I was actually working with the Community Planning Service.

Q. What did you do after that?

A. After that I went over into Mississippi.

Q. Why?

A. In connection with the Meredith March.

Q. Mr. Duvernay, have you been employed since then?

A. Yes, I have.

Q. Where?

A. My uncle's a contractor, and now and then I have worked for him.

Q. So you had one semester of college, is that right?

A. A half a semester of college.

Q. Now, Mr. Duvernay, this statement that you wrote at the time you were told to report for induction, is that a correct statement of your position in connection [41] with this matter?

A. Yes sir.

Q. And does that reflect your position in connection with this particular matter?

A. Yes sir, it does.

Q. Now, when you received your first orders for induction back in April of this year, did you then go to the Board and request that the Board grant you a deferment?

A. Not immediately after, no.

Q. At some point after that, you did, however, is that right?

A. I first went to the Board——

Mr. MERHIGE. If the Court please, I think Counsel is leading the witness, and I don't think that's proper.

The COURT. Yes, don't lead the witness.

Mr. SMITH. I'm sorry, Your Honor. I didn't mean to lead him.

The COURT. All right, let's get on.

Mr. SMITH:

Q. About how long after you refused to be inducted did you go to the Board to request a deferment?

Mr. MERHIGE. [42] I object to that. The witness has not said that he went to the Board to request a deferment.

Mr. SMITH. I withdraw the question and rephrase it.

The COURT. Very well.

Mr. SMITH:

Q. Did you appear at the Board in person at some point after you received your induction notice?

A. Yes sir, I did.

Q. For what purpose?

A. In an effort to get a deferment.

Q. Whom did you speak to there?

A. The Clerk, Mrs. Calmes.

Q. The lady who was on the stand here before?

A. Yes sir.

Q. What did she tell you?

A. Well, as I started talking, she just shook her head.

Mr. MERHIGE. If the Court please, I am going to object to this testimony, because this is a conclusion on the part of the witness.

The COURT. Overruled. Let's get on.

[43] Mr. SMITH:

Q. Mr. Duvernay, just tell us what you said to her and what she said to you.

A. Well, I tried to get a deferment on the ground that I had a plan to get some more schooling in LSU in September and also on the ground of hardship, but as I was talking, she just kept shaking her head. She wouldn't give me any answer, so I asked her, "How come when I went to the Army Recruiting Station and tried to enlist, they said I had a civil case?"

Q. Did you tell her there was some prosecution pending against you, as far as you knew?

A. Did I tell her that?

Q. Yes.

A. Yes sir.

Q. What did you tell her you had been charged with?

A. I just told her civil rights. I remember saying something about demonstrations and that the charges were——

Mr. MERHIGE. I object to this testimony, Your Honor, because I don't think this is relevant at all to this case.

The COURT. Objection sustained.

[44] Mr. SMITH:

Q. Did she say or indicate that she knew that this was what prevented you from being inducted into the Armed Forces?

A. She didn't say.

Q. She didn't say anything about that?

A. No sir.

The COURT:

Q. Tell me this. If you refused to be inducted into the Army because you didn't want to go to Vietnam or do any fighting, why was it that you went and tried to enlist before that on that other occasion? What was it that changed your mind?

A. Why I didn't want to go to Vietnam?

Q. Yes, after you had tried to enlist before?

A. Well, I believed in it then.

Q. You believed in it one day, and then the next day you did not, is that the way it was?

A. No sir, it wasn't the next day.

Q. How long after you tried to enlist was it that you decided you did not want to be inducted?

A. Oh, in a few weeks, say.

Q. When you went over to Mississippi, did you take part in the march or the demonstration that involved Meredith; was that what I understood you to say?

[45] A. Yes sir.

Q. Did you make any speeches over there, or just take part in the demonstration?

A. I was just there in sympathy.

Q. In sympathy?

A. Yes sir.

The COURT. All right, proceed.

Mr. SMITH:

Q. Duvernay, when did you try to enlist, do you remember the date, approximately?

A. Well, in the latter part of November, or the beginning of September I think it was.

Q. Last year?

A. In '65.

Q. Then did you ever go back to Draft Board No. 42 again after that time that you have just described to us?

A. Yes sir, I did. I went back with my mother.

Q. What happened on that occasion?

A. Well, my mother went over to see about getting a deferment, hardship, and the Clerk, Mrs. Calmes, she said, that I would receive a letter from the Board, that they had a meeting coming up, and that they would notify me by letter when they wanted me to appear before the Board and present my case.

[46] Q. All right, did you do that?

A. Well, I never did receive any notice, and I was going to go up anyway, but my mother told me to wait.

Mr. MERHIGE. I object to hearsay testimony, Your Honor.

The COURT. Don't repeat what anyone told you. Just tell us what happened.

Mr. SMITH:

Q. Mr. Duvernay, don't repeat what you mother said when you went there, just what happened, what you did there.

A. Well, my mother asked the Clerk about the letter and me appearing before the Board, and the Clerk denied saying what she did to me, and she said, that my case would be considered, and that I would receive a letter in a few days stating whether or not I was granted a deferment.

Q. Did you request a deferment at that particular time?

A. Yes sir, I did.

Q. On what grounds?

A. Hardship.

Q. On what ground?

A. I was going to help to support my mother and sisters and brothers.

[47] Q. Did Mrs. Calmes say anything about that, other than that it would be submitted to the Board for their consideration?

A. No, not that I recall.

Q. Now, did you ever go back to the Board at any other time after this second visit?

A. Yes, I went back with Richard Aaronson.

Q. Who was he?

A. He was team chief of the Lower Ninth Ward for the Social Welfare Planning Council.

Q. And what was the purpose of going with him that time to the Board?

A. The purpose was to try to see about my job with them.

Q. What position did you say he held?

A. Team chief.

Q. And what date was that with reference to the notice of induction you got, do you recall?

A. It wasn't too long before the date I supposed to report for induction.

Q. All right, what happened on that third visit?

A. I didn't pay attention to the conversation.

Q. What was the purpose of going there that day?

A. Well, the purpose was to present my case and to get a deferment if possible, and to have a hearing by the Board. [48] It was agreed that she would present a letter to the Board.

Q. Who spoke with Mrs. Calmes at that time?

A. Mr. Aaronson.

Q. What was his position?

A. He was team chief of the Lower Ninth Ward for the Poverty Program.

Q. And what was the purpose for your going there?

A. To see about getting a job deferment.

Q. Is Mr. Aaronson present in the city now?

A. No, he is not.

Q. Where is he?

A. New York.

Q. What's his reason for not being in the city at this time, do you know?

A. Yes, he's on vacation.

Q. When will he return?

A. In a week or week and a half, I imagine.

Q. Did you visit the office of the local board, Board 42, at any time subsequent to that?

A. Not that I recall, no.

Mr. SMITH. I have no further questions.

[49] CROSS EXAMINATION

Mr. MERHIGE:

Q. Mr. Duvernay, have you complied with all the directives issued by your Selective Service Board, other than this matter before the Court today?

A. Would you repeat that, please?

Q. Have you complied with all the other directives of your Draft Board, other than the one on trial here today?

A. Yes sir, I have.

Q. On March 4, 1966, did you not have an order to report for a physical examination, and you did not do so?

A. I reported for my physical examination, I think, five or ten minutes late, and I was reassigned to a later date, and I did report on time the next time.

Q. Are you sure it was five or ten minutes later that you reported?

A. Yes sir.

Q. Are you sure that it wasn't that you were simply too late to be examined, that you were reassigned a later date?

A. I don't think I was too late to be examined, but I was told at the office it was too late.

The COURT:

Q. You didn't agree with that either, did you?

[50] A. I didn't argue with them about it.

Q. That doesn't answer my question.

A. What was the question?

Q. I said, you didn't agree with that either, did you?

A. No, I didn't agree with it.

The COURT. All right, let's get on.

Mr. MERHIGE:

Q. You say you went to the Board when you got your notice of induction; was it very long after you got that notice?

A. Well, it wasn't immediately afterwards, but it was after that. I don't remember how long after it was.

Q. Was it within a few days or a week, or something along that line?

A. I don't know.

Q. Well, what I am driving at is, why didn't you go before, when you had your 1–A classification the preceding two years?

A. When I received that 1–A, I cut it out along the dotted

line, like it says, and I put it in my wallet, and I went about my activities.

Q. Mr. Duvernay, are you suggesting that you have been put upon or discriminated against or what have you by the Board?

[51] A. I think so.

Q. In 1964, were you not classified 1–A?

A. In 1964?

Q. Yes.

A. In 1964, I was classified 1–A by mistake. The Board, they claimed I didn't fill something out properly.

Q. All right; how about in February, 1964, how about then?

A. I don't know.

Q. Weren't you classified 1–S; wasn't that a deferment?

A. Yes.

Q. And your classification was changed to 1–A in July of 1964, isn't that right?

A. That was when the mistake was. They thought I had got out of school when they changed that classification, but that was a mistake. I went back to the Board and they changed that, you know, corrected that. I was sent a form back to fill in with the right information.

Q. You didn't just put that one in your pocket, like you did the later one, when you were classified 1–A, did you? You took a little more time with that one, because you found a mistake in it, is that right?

A. Yes, there was a mistake.

Q. And you just didn't put it in your pocket that time, as you have just told us, did you?

[52] A. No, I didn't.

The COURT:

Q. Let me ask you this. When you were in school, you were given a student classification, weren't you?

A. Yes sir, I was.

Q. And I believe you said you went to college one semester, is that correct?

A. In college?

Q. Yes.

A. A half semester, sir.

Q. A half semester?

A. Yes sir.

Q. I see. And then later you wanted a student classification on the ground that you intended to go back to school, is that right?

A. Yes, that's right.

The COURT. All right, proceed.

Mr. MERHIGE:

Q. In 1964, late in November, a form was mailed to you for verification of enrollment, which you sent in on November 23, 1964, and you didn't get a student deferment, isn't that right, sir?

A. Yes, that's right.

Q. November 17, 1965, you got a student deferment, is that [53] right, sir?

A. That's correct.

Q. How much time did you say you spent in school, Mr. Duvernay?

A. In college?

Q. In college, yes sir.

A. A half semester.

Q. A half semester?

A. Yes.

Q. What year did you get out of high school?

A. '65.

Q. So you started college in '65, would that be correct?

A. Yes.

Q. Would that have been in September or June?

A. September.

Q. And then you had your 2-S classification, which was a student deferment, is that right?

A. Yes sir.

Q. In January, 1965, or rather, 1966, you were classified 1-A, is that right, sir?

A. Would you repeat that, please?

Q. In 1966, in January, you were classified 1-A, isn't that right?

A. That's right.

Q. Now, from this time on, your case actually started, and [54] now I want to ask you, Mr. Duvernay, if you feel you were discriminated against up to that point?

A. Not in the sense of a classification.

The COURT:

Q. You were not in school then, were you?

A. Sir, I just can't give a yes or no answer to some of these questions. If I could explain, maybe I could clear it up.

Mr. MERHIGE:

Q. I would rather you just answered the questions, Mr. Duvernay, and your attorney can ask you any more questions that he wants when we are finished, okay?

A. Yes.

Q. Now, when you were put in 1–A, then you were not in school, were you?

A. No, I wasn't.

Q. Mr. Duvernay, when you went to the Board the first time with your induction notice, and you stated that you wanted a deferment, did you offer anything to sustain your position that you had a right to a deferment? In other words, did you file anything in your record? Did you give any kind of proof?

A. What do you mean, proof?

Q. In other words, you didn't go up to the Board and fill out any papers and submit anything in your record, to [55] give the Board some kind of notice or grounds for reclassifying you on any grounds, did you?

A. I told you when I went up and started to talk to the Clerk, she just sat there shaking her head.

Q. Is that all she did, shake her head?

A. Yes sir.

Q. She didn't say anything to you?

A. No, she didn't, not until I told her about this thing hanging over me in court, and then all she said was to produce evidence of that.

Q. Not until that time?

A. Not until that time, no sir.

Q. She never said a word to you until you brought that up?

A. No, she didn't. She just sat there shaking her head, and I figured there was no use of me going on talking to her if I wasn't going to get anywhere.

Q. Now, on this third visit you say you made with your housing chief, you stated that he or you were informed that a letter involving your work would be presented to the Board, is that what you said, sir?

A. Yes.

Q. Was a letter presented to the Board?

A. According to Mrs. Calmes.

Q. What date was that, do you know?

A. No, I don't.

[56] Mr. MERHIGE. Counsel, do you have the letter there?

Mr. SMITH. Yes, here it is.

(Document handed to Mr. Merhige by Mr. Smith.)

Mr. MERHIGE:

Q. Is the letter to which you were referring, Mr. Duvernay?

A. Yes, that's it.

Q. This has already been introduced in evidence as Exhibit 3, isn't that right?

A. Yes, that's the one.

Q. Tell me, Mr. Duvernay, how long were you employed in this type of work?

A. In this type of work?

Q. For the Social Welfare Planning Council.

A. Oh, a couple of months.

Q. A couple of months?

A. Yes sir.

Q. That would make it March some time when you started, would that be correct?

A. I don't know.

Q. Your notice was not mailed until April 13, after your original request for a deferment. Why didn't you come in before that; you were working? You had been working over a month for these people, by your admis-[57]sion, and yet you didn't do anything about it at that time, did you?

A. No, I didn't.

Q. You didn't do anything to change your draft status then, did you?

A. No, that was negligence on my part.

Mr. MERHIGE. I have no further questions.

Mr. SMITH. That's all the questions I have.

The COURT. All right, you may step down. Call your next witness.

Mrs. RAYMOND DUVERNAY, after first being duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. SMITH:

Q. You are Mrs. Raymond Duvernay, mother of Raymond Joseph Duvernay, seated here, is that right?

A. I am.

Q. Did you ever have occasion to accompany him to the office of the local draft board No. 42, in New Orleans?

A. Yes sir, I did.

[58] Q. Do you remember when that was?

A. I don't remember the exact date.

Q. Would you give it to use approximately?

A. Well, it was after he got his induction notice. I do know that.

Q. Why did you go there, Mrs. Duvernay?

A. Well, I went there to make a request for a deferment for him on hardship, because he was working at the time and was part of my support and his brothers and sisters.

Q. How many children was he helping to support?

A. Six.

Q. How much money would he give you?

A. Well, out of his first job, he gave me fifty dollars. That was every two weeks, out of his pay check, and then he got another type job, that was social welfare planning, and he gave me seventy. That was a better type job.

Q. Whom did you see when you went up to the Board?

A. Well, the lady that was on the stand. I don't remember her name, but she was the clerk up there.

Q. Mrs. Calmes?

A. Yes sir.

Q. Do you remember Mrs. Calmes?

A. Yes sir, I remember her.

[59] Q. She was the lady who was here from the Board and testified?

A. Yes sir, that's the one.

Q. What did she say when you requested this deferment for your son?

A. Well, she asked me all kinds of questions about if my husband and I was together and why did he want a deferment, and I explained it to her. I told her he was my only support, other than what I could bring in. I was working at the Charity Hospital.

Q. Then what did she say?

A. Well, she was just shaking her head like she didn't want to bother with us. I don't know what she meant by that, but she asked me about his salary and everything, and she wrote it down and had me sign it.

Q. Then what happened?

A. Then she said that the Board was going to meet. If I'm not mistaken, I think we went there on a Friday, and the Board was supposed to meet that following Wednesday, and she said it would have to come up before the Board then, and that the Board was meeting that Wednesday at seven o'clock, that Wednesday evening, and that he would receive a letter in the mail for him to come to that meeting, which he did not receive, [60] so that Monday or maybe it was Tuesday we went back.

Q. Was that before the Wednesday that the Board was to meet?

A. Yes sir, because he had not received that letter, and it had me worried, because I knew she said we would receive the letter.

Q. What happened when you went back this next time to ask about the letter, why it hadn't arrived? What happened then?

A. Well, she told me that she did not say that he would receive a letter. She said you have to get an invitation to sit in on the hearing. I said, "Well, that's what we are waiting for; you said he would receive a letter," but she contradicted me and said that she did not say that.

Q. Did you ask her for an invitation?

A. Yes sir, I did.

The COURT:

Q. What happened then?

A. She said it wasn't necessary.

Mr. SMITH:

Q. What did she say?

A. She said it was not necessary, that it was not necessary for him to be present at the meeting.

[61] Q. What did you then do?

A. Well, we went on back home.

Q. Did you go back to the Board a third time, Mrs. Duvernay?

A. Yes sir.

Q. How much later did you go back this third time?

A. I went, I think it was a couple of days or about three or four days after the hearing.

Q. After what?

A. After the hearing was supposed to be.

Q. Do you mean after the hearing that Wednesday?

A. Yes sir.

Q. All right, what happened?

A. She was not there that time.

Q. Whom did you talk to?

A. I don't know the lady's name, but it was the lady at the other desk, and the lady recognized me, and she said Mrs. Calmes was not there, that she was out today, and she asked me if she could help me, so I told her about it and I told her I come back to talk to Mrs. Calmes about it again.

Q. What did you want to do on this third trip; what was the purpose of your going there the third time, Mrs. Duvernay?

A. I wanted to know what was said at the meeting, and I [62] wanted to know why I couldn't have a personal appearance with the Board.

Q. What happened then? What did the lady say to you about your request for a personal appearance before the board?

A. She said there wasn't anything she could do about it, but that she would let her know that I had been there, and I never heard no more about it.

Q. Did you ever go back to the Board again after that?

A. No, because his time was up for him to go into the service, and in other words, his time to report to the induction station.

Mr. SMITH. I have no further questions. Thank you.

CROSS EXAMINATION

Mr. MERHIGE:

Q. Mrs. Duvernay, if you will bear with me a moment, I just want to get straight on exactly what happened. Now, you accompanied your son up to the Board the first time to seek a deferment for him, is that right?

A. Yes sir.

Q. And during that period of time, did you attempt to get an audience with the Board?

A. Yes sir, I did.

[63] Q. And what did you say happened then?

A. That was when she said he would get a letter from the Board through the mail. She said she would get it out to him that evening.

Q. And you say he didn't get any such letter?

A. No sir, he didn't.

Q. And then you went back, I believe you said, the following Monday or Tuesday, before this Board meeting, is that right?

A. Yes, we did. I was getting worried. We didn't get the letter, and I wanted to know why.

Q. And you never received that letter, you are sure of that?

A. Yes, I am sure of that; he has yet to get that letter.

Q. Now, the second time you went back up there, I'm not clear on why you went up the second time?

A. Well, I wanted to know why we didn't get a letter. She told us that we would get a letter for him to come down and appear at the Board meeting.

Q. What did she tell you on this second visit to the Board?

A. She said you had to have an invitation, and I told her that that's what we was waiting for, for that letter to come for him.

Q. Now, your third visit to the Board, that time Mrs. [64] Calmes was not there, and one of the other clerks talked with you, is that right?

A. Yes sir. Now, this other lady wasn't handling his record though, but she said she would make a note that we had been in and put it on this other lady's desk.

Q. You mean on Mrs. Calmes' desk?

A. Yes sir.

Q. Did she make any other comment to you about this matter?

A. No, she just took the notation to give to the other lady.

Mr. MERHIGE. Thank you. I have no further questions.

The COURT. Do you have anything further?

Mr. SMITH. No, Your Honor.

The COURT. All right, you may step down. Call your next witness.

Mr. SMITH. Your Honor, the only other part of my case that I have on behalf of the defendant is the cross examination of members of Board 42, but I would like to be able to do that after I have taken a quick glance at these minutes.

[65] The COURT. All right, when will you have those minutes?

Mr. MERHIGE. We can get them right away, Your Honor, whatever the Court wishes.

The COURT. Well, let's take a recess until 2:15, and that will give you time to produce them and have Counsel to look at them. We will recess until 2:15 o'clock, and I will instruct the jurors that they are not to discuss this case among themselves or with anyone else until that time.

All right, court will be in recess until 2:15.

(Recess taken for lunch.)

2:15 p.m.

The COURT. All right, you may proceed.

Mr. MERHIGE. Your Honor, the Government at this time would like to file xerox copies of the two documents previously filed, G–1 and G–2.

The COURT. All right. Is there any objection?

[66] Mr. SMITH. We have no objection, Your Honor.

The COURT. All right, they may be admitted. Who is your next witness?

Mr. SMITH. I would like to call Mr. Florian Lizana, Your Honor.

The COURT. Very well.

FLORIAN J. LIZANA, after first being duly sworn, testified as follows:

CROSS EXAMINATION

Mr. SMITH:

Q. Would you state your full name, please, sir?

A. Florian J. Lizana.

Q. Mr. Lizana, are you a member of Draft Board, or Selective Service Board No. 42?

A. That's right, sir.

Q. How long have you been a member of that Board?

A. Between four and five years.

Q. Are you presently serving as chairman of that Board?

A. Yes.

Q. Whom did you replace as chairman?

[67] A. I believe that was Jack Helm.

Q. Mr. Helm?

A. Yes sir.

Q. Mr. Helm resigned?

A. Yes sir.

Q. As a matter of fact, wasn't he the same Mr. Helm that had been accused of being a member of the Ku Klux Klan?

Mr. MERHIGE. I object to that question, if the Court please. That has no relevancy here.

The COURT. Objection sustained.

Mr. SMITH:

Q. Was Mr. Helm a member of the Board when Mr. Duvernay was originally classified by Board No. 42?

A. I would have to see the records on that before I could answer that question.

Q. I show you what purports to be the minutes of Local Board 42, at a meeting dated January 19, 1966, which I will mark for identification purposes Duvernay 7.

The COURT. When he was originally classified?

Mr. SMITH. Yes, Your Honor, when he was originally classified [68] 1–A.

The COURT. Well, he was classified 1–A off and on, wasn't he?

Mr. SMITH. That's right, Your Honor. This was the second time, just about at the time of this particular order of induction, may it please the Court.

The COURT. All right.

Mr. SMITH:

Q. What I am asking, sir, is was Mr. Helm present at this meeting of the Board, when Duvernay was classified 1–A?

A. Well, according to this record, it says here that he was present at this meeting when Mr. Duvernay was classified.

Q. And the classification was what, Mr. Lizana?

A. Well, actually it was changed from 2–S to 1–A.

The COURT:

Q. Was he a member of the Board when Duvernay was classified 2–S?

A. I am sure he was, sir.

The COURT. All right, let's get on.

[69] Mr. SMITH:

Q. Now, I show you the first part of those minutes of this Local Board meeting which I have just shown you, which has been marked Duvernay 7, and I ask you if it indicates in any way that Mr. Duvernay's classification was by a majority vote of the Local Board?

A. Yes, these were all by a majority vote.

Q. That's what I'm getting at, Mr. Lizana. This shows the classification of five hundred registrants, and now my question is, did you all vote on those five hundred as a group, or individually, or how?

A. Five hundred as a group—I don't quite understand your question, sir.

The COURT:

Q. His question is, did you consider each case individually, or did you consider the whole group at one time in your vote.

A. Sir, the way that is done, and it is pretty much routine with all Draft Boards, I'm sure, is that one man will say that we are classifying a man as whatever classification it may be because of such and such, and then the Board will concur on the vote.

Mr. SMITH:

Q. Isn't it a fact, Mr. Lizana, that you and your clerk, who does most of the clerical work for you in preparing this list, just—that you just draw up a list [70] of the names of applicants or registrants, and in this case there are five hundred eighty-four listed here, and don't you just present those to the rest of the Board and vote on them in a lump sum?

A. Well, now, the clerk does categorize the applicants or registrants, and then the Board votes on these, but not as a lump group, but as individuals.

Q. Mr. Lizana, are you telling us now that you voted five hundred eighty-four times that day?

A. If that was the number of registrants, yes.

Q. Well, this shows five hundred eighty-four registrants that day. Are you saying now that you took five hundred eighty-four ballots that day?

A. No, not ballots, sir.

Q. Well, how is your vote recorded?

A. It's an oral vote.

Q. Oral vote?

A. Yes sir.

Q. All right, I'll ask the question again, did you vote five hundred eighty-four times that day?

A. If there are five hundred eighty-four names on there, I suppose we did.

Q. I'm going to show you this document again, Mr. Lizana, and I have reference here to the first part, which says that there were five hundred eighty-four regis-[71]trants classified by the Local Board that day, would you agree to that? Isn't that what it says?

A. Yes, that's right.

Q. Did you vote for them as a lump, as a group, or did you vote for them individually?

A. Individually, sir.

Q. Are you also saying, sir, that of these five hundred eighty-four votes, every one of them was a vote of five to nothing, a unanimous vote, is that right?

A. That may be, sir. I don't know. I can't tell you just from memory on that.

Q. Well, I would just like for you to confirm that, if you would, sir.

A. That's what it says.

Q. Now, do you recall voting five hundred eighty-four times, I mean of your own independent recollection, that day?

A. No, I don't. I don't recall voting that number of times. I wouldn't be able to remember that.

Q. You don't recall voting five hundred eighty-four times then?

A. No sir.

Q. Mr. Lizana, how did you proceed with this voting? Was each name called off, and then you would take a vote on it, is that the way it was?

[72] A. Well, it would depend on whichever Board member happened to have the particular file at that time, sir.

Q. Are you saying then that you would discuss each file before you took a vote on that particular registrant or applicant?

A. Yes, but now it wouldn't be a long discussion, sir. The one who had the file would just say that we were going to classify this or that man as such and such, and the rest of the Board would be in agreement after the facts were presented.

Q. According to this, your meeting started at seven o'clock, and adjourned at ten; that's three hours, is that correct?

A. Yes, according to my mathematics it is.

Q. Do you recall voting five hundred eighty-four times in those three hours?

A. I suppose so.

Q. Sir?

A. I suppose we did, if it says that, if the record shows that.

Q. Well, I'm asking you; I don't want to put words in your mouth.

The COURT:

Q. Were many of these reclassified?

[73] A. Yes, that's correct, sir.

Q. Would you say most of them were reclassified?

A. No sir, the majority of those were not.

Q. All right.

Mr. SMITH:

Q. Now, Mr. Lizana, I show you the first page again, of the Exhibit which has been marked Duvernay 7, which are the minutes of the meeting of January 19, and I ask you, did you take pains to discuss in detail certain classifications of certain persons, let's see, eight persons, at that meeting, in which their particular cases were discused in more detail?

A. That's correct, sir.

Q. Now, I show the minutes of the meeting of April 27, 1966, and ask you if you were at that meeting and if the Board at that time considered the classification or status in any way, of Mr. Duvernay, and I will mark this document for identification purposes Duvernay 8.

A. I was at that meeting, according to this record, yes. I don't remember of my own knowledge being there at the time, however.

Q. You are saying that you have no independent recollection of being there, but the record shows that you were there; is that what you are saying?

[74] A. That's right, sir. I was there, but I do not see any record of Mr. Duvernay on this record.

Q. I am going to show you another document, which I will mark Duvernay 9, and ask you if that is a reproduction of the minutes of the meeting of May 23, and if you were there, and if Duvernay was mentioned?

A. The record shows I was at the meeting, sir, but there is no mention of Duvernay on this, according to this form. May I elaborate on that?

The COURT. Yes, you may.

A. There is a possibility that Duvernay was discussed at this meeting, and there was no reason for his name being on there, so in that case it would not have appeared. The record or his individual file would bear more information than that would, sir.

Mr. SMITH:

Q. It is possible that there were a lot of people there then, that might have been mentioned, and there is nothing in the minutes about that, is that right?

A. That's correct, sir.

The COURT:

Q. You say the personal records of the individual would have more information than this?

A. That's right, sir.

[75] Mr. SMITH:

Q. But you have examined the minutes of these two meetings, and the name of Duvernay is not mentioned, at least in these typed minutes, is that right?

A. Yes sir, that's right.

Mr. SMITH. In connection with the witness' testimony, Your Honor, I would like to file and introduce in evidence Duvernay 8 and Duvernay 7 and Duvernay 9.

The COURT. They may be admitted.

Mr. SMITH. We tender the witness.

Examination by Mr. MERHIGE:

Q. Mr. Lizana, you are a member of Local Draft Board 42, and you have been for four or five years, I believe you said, is that right?

A. That's right, sir.

Q. In your capacity as a member of the Board, and as chairman, you have had countless numbers of cases involving classification and reclassification of applicants or registrants before the Board, have you not, sir?

A. That's correct, yes.

Q. Do you have any recollection of these cases by name, the [76] names of people you discussed, and so forth? Do you recall all of those cases individually?

A. No, that would be impossible.

Q. Now, you stated that the clerk categorized the names of applicants in many of these files before they were exhibited to the Board for its vote or consideration, is that right?

A. That's right.

Q. Are these routine files, Mr. Lizana?

A. Yes sir.

Q. Are these files wherein generally there is no mitigating factor that would put them in a doubtful category, or that would require additional consideration and discussion of the facts involved in these cases?

A. No, they would be more or less routine, most of them.

The COURT:

Q. Let me ask you this. After an applicant receives a notice of induction and sends in a letter claiming an exemption or asking for a deferment on grounds of employment or hardship or something of that nature, is his letter considered?

A. Very definitely, sir.

Q. It would be?

A. Yes sir. Any information that is submitted would be considered if it was thought to be of any consequence [77] at all. Any information in a case like that would be definitely reviewed, and the Board would definitely take action at that time.

Q. Even if he may have already received notice of induction?

A. That's right, sir.

Mr. MERHIGE:

Q. But in so considering, there would be no need to reopen a man's classification, would there, sir?

Mr. SMITH. I object to the leading question, may it please the Court.

The COURT. You put him on. You put him on for cross-examination, and under the rule he can be cross examined by the other side. Answer the question.

A. What was the question again?

Mr. MERHIGE:

Q. Are you able to reclassify a man after considering additional factors, such as a letter, and so forth, that might lead to a different classification of this man, without opening his file?

A. No sir.

Q. When you said that the clerk categorized the names of [78] the applicants before they are tendered to the board for decision, do you mean she puts them in segregated form, separating the more involved ones, from the run-of-the-mill type; would that be correct, sir?

A. That's correct, yes sir.

Q. And would it be correct to say, sir, that you would spend more time discussing the details and considering the more involved cases than the routine cases?

A. Very definitely.

Mr. MERHIGE. I have no further questions.

The COURT. All right, you may step down. Call your next witness.

Mr. SMITH. I call Roy J. Martin.

The COURT. Very well.

ROY J. MARTIN, after first being duly sworn, testified as follows:

CROSS EXAMINATION

Mr. SMITH:

Q. Please state your name.

[79] A. Roy J. Martin.

Q. And you are a member of the Draft Board, No. 42, is that right?

A. Yes.

Q. Mr. Martin, I would like to discuss briefly the minutes of some of the meetings of the Draft Board with you.

A. Yes sir.

Q. I have an exhibit here marked for identification Duvernay 7, which purports to be minutes of the Local Board meeting for January 19, 1966, at which time Mr. Duvernay is alleged to have had his draft classification changed from Student Deferment to 1–A, and I want you to look at this document, if you will, sir.

A. All right.

Q. Were you at that meeting, Mr. Martin?

A. Yes, I was at that meeting.

Q. Do you recall that meeting, sir?

A. Yes, I remember the meeting.

Q. According to the minutes, did that meeting start at seven o'clock, and end about ten o'clock?

A. Yes, sir, that's approximately correct.

Q. Now, the minutes of that meeting reflect that a large group of registrants, five hundred eighty-four, were classified by majority vote of the Local Board, [80] is that right?

A. Yes.

Q. How is that voting done, Mr. Martin?

A. Well, we review the routine cases, and of course most of them are routine, and we vote on them. One member will recommend a classification to be assigned to a registrant after a look at the file, and the remainder of the Board will concur in that finding. Now, of course, when we have a case involving some question, then that case is discussed at full length as to its merits and demerits, and they take a little more time.

Q. And is it fair to say that you assign classifications to the routine cases, or maybe I should say to the ones that present no immediate problems, first, and then go on to the individual cases that might have some problem presented; is that about the way it goes?

A. Yes sir, that's right.

Q. And those that present problems, you discuss in pretty good detail, I take it, is that right?

A. Yes, that's right.

Q. You have no independent recollection of what you did in any of those cases in which you may have found problems when they were presented at this Board meeting, [81] do you?

A. No, I don't remember particular cases, because we have so many, but I could do this, Mr. Smith, I could familiarize myself with the file of an individual and determine probably the reason we assigned whatever classification was assigned to him.

Q. But I mean, you have no independent recollection of any of these cases, outside of examining the records to determine that, do you?

A. No, I don't.

Q. Then, Mr. Martin, I gather from your testimony that there is a difference in the way you handled this first group of five hundred eighty-four registrants and the way you handled the eight that follow on these minutes, isn't that correct?

A. Of course, Mr. Smith, I don't have the benefit of each file before me, but referring to these minutes, we don't include all those names or discussions on the minutes unless it has a particular significance, or is considered very much out of the ordinary.

Q. Let me ask you this, Mr. Martin. Did you consider those five hundred eighty-four cases, each individually, or did you just vote to take the clerk's classification in each of those cases?

A. We discussed each one, Mr. Smith, and unless there was [82] some dissension, only one wrote on the registrant's sheet the result of the voting, in other words, his particular classification.

Q. Are you telling us that you considered and voted on these five hundred eighty-four cases individually that night between the hours of seven and ten?

A. Well, that's as difficult as it sounds when you consider that we had five members, and the great majority of these cases presented no problem. They were routine cases, so what we do, we divided them up among the members, which lightens the load quite a bit on each member, and then at these meetings when these names are brought up, the member who has studied the file will make his recommendation and give his reasons, and then the vote is taken, but they are taken up individually, if that's your question.

Q. And the Board considers each case then and votes individually on each one, is that right?

A. Yes sir, the Board does, yes.

Q. All five hundred eighty-four in this case?

A. Yes.

Q. Where in the minutes were these other individuals listed where there was a problem presented and where you had a more extensive discussion, about those cases? Would that be in the minutes?

[83] A. Well, I don't have the file before me, Mr. Smith, so I couldn't answer that particular question.

Q. The reason I am asking you that, Mr. Martin, is that the vote on these routine cases is shown right here, and out of the five hundred eighty-four cases, every one of them shows that the vote was five to nothing, is that right?

A. Yes sir, that's right.

Q. Mr. Martin, do you recall a letter that was received by the Board from Mr. Rosenberg from the Social Welfare Planning Council, asking that this man be deferred?

A. I have some recollection of it, yes.

Q. Now, I am going to show you a copy of that letter in this case, Mr. Martin, marked Duvernay 3, and ask you if the Board ever took any action or considered it even?

A. Well, that letter was discussed at one of the meetings, Mr. Smith, but because of the status of the case, there was no further action.

Mr. SMITH. I have no further questions.

Mr. MERHIGE. I have no questions.

The COURT. All right, you may step down. Who's your next [84] witness?

Mr. SMITH. Mr. Sidney A. Bozonier.

SIDNEY A. BOZONIER, after first being duly sworn, testified as follows:

CROSS EXAMINATION

Mr. SMITH:

Q. Please state your name to the ladies and gentlemen of the jury, sir.

A. Sidney A. Bozonier.

Q. And you are a member of Draft Board 42, is that right, sir?

A. Yes.

Q. And that's located in New Orleans?

A. Yes sir.

Q. And you have been a member how long, sir?

A. About sixteen years.

Q. Now, Mr. Bozonier, you were present at a meeting on January 19, 1966, when this young man, the defendant, had his classification changed from a Student Deferment to 1-A, is that right?

A. Well, I don't know if I attended that meeting or not. I attended most of the meetings, and still do, but I can't say whether I was at that one or not.

[85] Q. If the minutes of that meeting show that you were present, you wouldn't deny that, would you, sir?

A. No, if the minutes have my name down there as being present, then I was present. I try to attend most meetings. You say it was one in November?

Q. No, January 19, 1966.

A. Oh, yes, January 19, that's right; yes, I attended that meeting.

Q. You were there?

A. Yes.

Q. Now, Mr. Bozonier, I note here, according to these minutes, that the classification of five hundred eighty-four people was determined by majority vote of the Board that night, is that correct?

A. Yes.

Q. How was that accomplished, sir? How was that vote taken on that many registrants?

A. Well, they are categorized by the Draft Board clerk, and then they are divided up, and each of us takes so many and studies it and decides on the classification, and then we concur with one another on them.

Q. That is more or less routine, would that be correct, Mr. Bozonier?

A. Yes, I would say so.

Q. Now, how about these that follow, with a little bit [86] more description? Would you call these non-routine cases that are listed below here?

A. Yes, that would be correct. We spend a little more time on those.

Q. You mean the Board members?

A. Yes, we talk to one another about them.

Q. Mr. Bozonier, we have a document here that is marked for identification Duvernay 8, which is the minutes of the Board on a night you were there, with two hundred thirty-four registrants being classified by majority vote. We also have a letter from Mrs. Calmes, stating that Duvernay's request, that is, his mother's request for a deferment, had been given careful consideration by the Board that day. You were one of the Board members that participated in that consideration, is that right?

A. Yes, I was.

Q. And did you carefully consider that letter, as Mrs. Calmes' letter says?

A. Yes sir.

Q. Do you see Mr. Duvernay's name in these minutes, indicating that such a letter had been considered by the Board?

A. No, it isn't here, but it's in the registrant's file. There's a paper in the registrant's file that shows [87] that it was considered.

Q. Isn't it possible that this letter might have got into this file without being considered at a Board meeting?

A. No sir.

Q. That's impossible?

A. Yes sir.

Mr. SMITH. I have no further questions.

Examination by Mr. MERHIGE:

Q. Sir, in considering the classifying of a registrant, isn't the registrant's file at your disposal?

A. Yes sir.

Q. And this is what you use, isn't that correct?

A. The registrant's file, yes sir.

Mr. MERHIGE. Thank you. I have no further questions.

The COURT. You may step down.

Mr. SMITH. That's all the testimony we are going to present, Your Honor. I am not going to call any other witnesses. I think that's enough.

The COURT. You rest?

[88] Mr. SMITH. We rest, Your Honor, yes sir.

Mr. MERHIGE. Your Honor, I have one rebuttal witness whom I wish to put on, with the permission of the Court.

The COURT. All right.

Colonel DOUGLAS C. PRITCHETT, after first being duly sworn, testified as follows:

Mr. MERHIGE:

Q. Would you state your name, please, sir?

A. Douglas C. Pritchett.

Q. And what is your occupation, sir?

A. I am an attorney—advisor for the Selective Service System in Louisiana.

Q. Colonel Pritchett, how long have you been employed with the Selective Service System?

A. In this capacity?

Q. In this capacity and otherwise.

A. Well, in this capacity approximately three years and nine months, and then for fourteen years prior to that, I represented the Director of Selective Service in five southwestern states as Appeals Representative, [89] and then prior to that, during World War II, I served as a member of the staff of the State Headquarters in Alabama.

Q. Just briefly, Colonel Pritchett, what are your duties in your present capacity?

A. Well, my duties are to review the files of registrants who were delinquents prior to their being reported to the United States Attorney, and I review the files of every registrant that is on appeal, and goes up to the Presidential Appeal Board in the State, and then I review some other type files for the purpose of giving recommendations as to procedures, etc., as requested by local boards in the state.

I represent the State Director and his staff in matters where there is some question of interpretation of the law as to regulations, and so forth.

Q. What are your duties when a registrant is in violation of a Selective Service Law, Colonel?

A. Well, my duties there are to carefully review his file, his official Selective Service file, in order to ascertain whether or not the registrant has been classified in accordance with Selective Service Regulations, and in accordance with the information that is in his file, and to ascertain if he has been accorded all his rights under the Selective Service Laws and Regula-[90] tions, and if, for example, I find that he has been processed in accordance with Selective Service Regulations and that he has been accorded all his rights, then I recommend, if he is a delinquent, I recommend to the Board that he be reported to the United States Attorney.

Q. Colonel Pritchett, in regard to a man's classification by the Board, and so forth, do the regulations prescribe the manner in which the Board is to classify a person?

A. Oh, yes, it does. They have varying and changing classifications as situations and conditions change, and that goes on all the time, and the Draft Board keeps a record of those changes, and the registrant is obligated by law to report any change in his status so that the classification can be constantly kept up to date pending his possible induction into the service.

Q. Colonel Pritchett, when a man's classification is changed from, say, 2–S to 1–A, what does that indicate, as far as the Board is concerned?

A. That indicates that he has been classified, or reclassified as 1–A, because he is to be made available for induction.

Q. Colonel Pritchett, did you in fact review the file of the defendant in this case?

[91] A. Yes. I reviewed the file of Raymond Joseph Duvernay, a registrant of Local Board 42. However, I am not personally acquainted with Mr. Duvernay.

Q. Is this the file you reviewed?

A. Yes, it is.

Q. Colonel Pritchett, from that file, have you drawn any conclusions as to this defendant?

Mr. SMITH. Just a moment. Your Honor, I am going to object to this question, as to calling for any conclusions.

The COURT. I sustain the objection.

Mr. MERHIGE:

Q. Have you drawn any recommendations as to what action you believe should be taken in this case, under the Selective Service Act?

Mr. SMITH. I object to that question, Your Honor. He's trying to get around the objection by asking the same question in another way.

The COURT. I sustain the objection.

Mr. MERHIGE:

Q. What did you find when you reviewed this file, Colonel

[92] Pritchett?

A. I found that the registrant had been classified in accordance with the Selective Service Regulations, and, based on information that is contained in this file, I found that——

Mr. SMITH. Your Honor, that's the same thing. I'm going to object to this line of questioning, and any questioning along

this line because it's strictly conjecture and conclusions on the part of the witness, and I don't think it's admissible.

The COURT. The objection is sustained. The record speaks for itself.

Mr. MERHIGE:

Q. After reviewing the registrant's file in this case, Colonel Pritchard, what action did you take, if any?

A. I recommended to the Local Board that he be reported to the United States Attorney as a delinquent.

Q. Was he so reported?

A. He was.

Q. What was this basis for your recommendation, Colonel?

Mr. SMITH. I object to that question, Your Honor. He's asking [93] for an opinion of the witness.

The COURT. The objection is sustained.

Mr. MERHIGE. I withdraw the question.

The COURT. All right.

Mr. MERHIGE. Your Honor, at this time, the Government offers this file in evidence as rebuttal of the testimony that this man's processing was not in accord with Regulations of the Selective Service Board.

The COURT. You are offering the entire record?

Mr. MERHIGE. Yes sir, Your Honor?

Mr. SMITH. I object to the introduction of this record, Your Honor. We have had testimony by witnesses on this very thing, and that's better than any reports that might be introduced.

The COURT. The objection is overruled. It may be admitted.

[94] Mr. MERHIGE. I will mark this record for identification purposes—Government's Exhibit G–4, if the Court please.

The COURT. All right, go ahead.

Mr. MERHIGE. We have no further questions.

Mr. SMITH. No questions.

Mr. MERHIGE:

Q. Just one more question, Colonel Pritchett. Does the original notice that is sent out by the Draft Board to the registrant inform him of his rights to appeal his classification?

A. Yes sir.

Mr. MERHIGE. Thank you. I have no further questions.

The COURT:

Q. Does this record include every classification that he has had?

A. Yes sir.

Q. From the time he first registered until now?

A. Yes sir.

The COURT. All right. Any further questions?

[95] Mr. MERHIGE. No, Your Honor.

The COURT. All right, you may step down. Do you have any more witnesses?

Mr. MERHIGE. No, Your Honor; the Government rests.

The COURT. That's your case?

Mr. MERHIGE. Yes, Your Honor.

Mr. SMITH. We have nothing further, Your Honor.

The COURT. All right. Let's take a ten-minute recess.

(Recess taken.)

The COURT. All right, gentlemen, you may proceed.

(Closing arguments made to the jury by Mr. Merhige and Mr. Smith.)

The COURT. Ladies and gentlemen of the jury, I wish at the outset of this charge to caution you that indictment itself is not evidence, but only an accusation of the Government, every mat-[96]erial element of which must be established by the evidence beyond a reasonable doubt before the defendant in this case can be found guilty.

The defendant has pleaded not guilty, which means that he denies every material allegation of the indictment. This places the burden of proof on the Government to show beyond a reasonable doubt that he is guilty of the charge made in the indictment, before he can be convicted.

To carry that further, the Government must establish every material element of the offense as charged, beyond a reasonable doubt, to a moral certainty.

It is my duty to tell you what the law that governs this case is. It is your duty to accept the law as it is given to you by the Court, and it is your duty to determine for yourselves what the facts of the case are, and to apply the law to the facts as you find them. I say to you also that the arguments of Counsel are not evidence. They are merely intended to assist you in understanding the respective theories and the contentions of the [97] prosecution and the defense.

You as jurors are the sole judges of the credibility of the witnesses, and in determining the credibility of a witness and the weight to be attached to his testimony, you may, among other things, consider his manner and demeanor on the witness stand, his feelings, interests, prejudice or bias, if any, whether

he is impartial or otherwise, and whether he has a purpose or interest to serve that might color his testimony, the means of knowing what he testified to, the probability or improbability of his testimony, the consistency or inconsistency of his statements, and with the other facts proved in the case, the reasonableness or unreasonableness of his testimony, and all the other circumstances surrounding his testimony, including whether or not he has been contradicted by other credible testimony.

You are not bound to believe unreasonable statements just because they are sworn to. In other words, we know that anyone can swear to anything if he has the courage to do so.

[98] If any witness has wilfully and falsely testified regarding material points, you may disregard his entire testimony unless it is corroborated by other credible evidence.

If conflicts in the testimony of witnesses exist, it is your duty to reconcile them without imputing perjury to anyone, if you can reasonably do so. If you cannot reasonably do so, you must give credence to those witnesses whom you believe most worthy of belief.

The credibility of the witnesses and the weight to be attached to their evidence are matters within your province. You are the exclusive judges as to where the truth lies.

If a witness is shown knowingly to have testified falsely concerning any material matters, you have a right to distrust such witnesses' testimony in other particulars, and you may reject all the testimony of that witness, or give it such credibility as you may think it deserves.

Now, to impeach a witness' testimony means to impute some fault or defect to, or [99] bias, in validity, etc., to bring or throw discredit on; to call in question; to challenge; as to impeach one's motives or conduct; specifically to challenge, or discredit the credibility of, as of a witness.

The law presumes the defendant to be innocent of the crime. Thus, a defendant, although accused, begins a trial with no evidence against him, and this presumption of innocence continues throughout the trial to its end, that the defendant is innocent of the things charged against him.

The law does not require of a defendant that he prove his innocence if a reasonable doubt exists in the case. The burden of proof is upon the government to prove his guilt by the evidence beyond a reasonable doubt.

This principle of law is not mere idle theory, but it must be followed by you, so if there are two reasonable theories, equally supported by the evidence, one of which is consistent with the guilt of the defendant, and the other consistent with his innocence, you must adopt that theory consistent with [100] the evidence and acquit him, because he could not be said to be guilty beyond a reasonable doubt.

The term "reasonable doubt" does not mean just any possible doubt that you might have, but it means such reasonable doubt that a careful, prudent and reasonable man ought to have if, after hearing all the evidence, he is not convinced to a moral certainty that the defendant is guilty of the charge, if there is a reasonable doubt in your mind about the guilt of the defendant of the charge contained in the indictment.

It does not mean a whimsical doubt, nor does it mean a possible doubt created by the reluctance on the part of a juror to perform an unpleasant task. It means a doubt arising out of the Government's possible failure to have proven the charges contained in the indictment.

To find a verdict of guilty, you must, after a consideration of all the evidence, be able to say conscientiously that you feel to a moral certainty that the charges are true, and have been proved beyond a reasonable [101] doubt.

If there is a reasonable doubt in your minds, you should acquit him of the charge; if there is no reasonable doubt in your minds, then you should find him guilty of the charge.

Now, ladies and gentlemen, I will read the indictment to you, and you will keep in mind, as I stated before, that an indictment is not evidence or not proof of wrongdoing. An indictment is merely an accusation by the Government, and as I stated, the defendant begins a trial with a presumption of innocence, and to return a verdict of guilty, the Government must prove his guilt beyond a reasonable doubt. As I said before, the burden is not on the defendant to prove himself innocent. He is presumed to be innocent. He begins the trial with that presumption.

Now, I will read the indictment. The Grand Jury charges that on or about the 20th day of May, 1966, in the New Orleans Division of the Eastern District of Louisiana, Raymond Joseph Duvernay wilfully and knowingly did fail and neglect to perform a duty required of him under and in the execution of the Uni- [102] versal Military Training and Service Act and the

rules, regulations, and directions duly made pursuant thereto, in that he did fail, neglect and refuse to comply with an order of his local board to submit to induction into the armed forces of the United States; all in violation of 50 APP, USC 462.

Now, the word "wilfully" means to do something unlawfully. It means to do something that is contrary to law.

The purpose of adding the word "knowingly" in the indictment was to make certain that no one is convicted for an act done because of a mistake or inadvertence or other reason.

An act is done wilfully if done voluntarily and purposely, with specific intent to do that which the law forbids; that is to say, with bad purpose, to disobey or disregard the law.

The defendant has raised the defense through his counsel that his classification by this particular Draft Board was arbitrary and without any basis in fact. That is something that you as jurors are going to have to [103] determine after considering all the evidence that has been presented in this trial.

Now, this defendant has been charged specifically with failing and neglecting to perform a duty required of him under and in the execution of the Universal Military Training and Service Act. Now, I will read the pertinent part of that Act, which was set up by Congress for the security of this country, as set out in Title 50, App., Section 451:

> "(a) This Act may be cited as the Universal Military Training and Service Act.
>
> "(b) The Congress declares that an adequate strength must be achieved and maintained to insure the security of this nation.
>
> "(c) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy.
>
> "(d) The Congress further declares, in accordance with our traditional military pol-[104]icy as expressed in the National Defense Act of 1916, as amended, that it is essential that the strength and organization of the National Guard, both ground and air, as an integral part of the first line defenses of this Nation, be at all times maintained and assured.

330-562—69——5

"To this end, it is the intent of the Congress that whenever Congress shall determine that units and organizations are needed for the national security in excess of those of the regular components of the ground forces and the air forces and those in active service under this title, the National Guard of the United States, both ground and air, or such part thereof as may be necessary, together with such units of the Reserve components as are necessary for a balanced force, shall be ordered to active Federal service and continue therein as long as such necessity exists.

"(e) The Congress further declares that adequate provision for national security requires maximum effort in the use of scientific research and development, and the fullest pos-[105]sible utilization of the Nation's technological, scientific, and other critical manpower resources.

"Except as otherwise provided in this Title, it shall be the duty of every male citizen of the United States, and every other male person now or hereafter in the United States who, on the day or days fixed for the first or any other subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

"The selection of persons for training and service under Section 4 shall be made in an impartial manner, under such rules and regulations as the President may prescribe, from the persons who are liable for such training and service, and who at the time of selection are registered and classified, but not deferred or exempted.

"Provided, that in the selection of per-[106]sons for training and service under this Title, and in the interpretation and execution of the provisions of this Title, there shall be no discrimination against any person on account of race or color.

"Provided further, that in the classification of registrants within the jurisdiction of any local board, the registrants of any particular registration may be classi-

fied, in the manner prescribed by and in accordance with rules and regulations prescribed by the President before, together with, or after the registrants of any prior registration or registrations; and in the selection for induction of persons within the jurisdiction of any local board and within any particular classifications, persons who were registered at any particular registration may be selected in the manner prescribed by and in accordance with the rules and regulations prescribed by the President, before, together with, or after persons who were registered at any prior registration or registrations."

All twelve of you must agree on a verdict, and although you are to determine in [107] your own minds whether you feel the defendant is innocent or guilty on every count, you are, of course, to confer with each other with regard to the evidence produced at the trial.

In other words, you are to have an open mind in discussing the facts and circumstances of the case with your fellow jurors. Your verdict must be unanimous.

You will select your own foreman when you get into the jury room, and the foreman will write the verdict on this form and sign it.

Are there any suggestions, gentlemen?

Mr. MERHIGE. None, Your Honor.

Mr. SMITH. I would just like to make my objections for the record, if the Court please.

The COURT. Well, you may do that after the jury retires. All right, the Marshal will attend the jury. Court will stand recessed.

Mr. SMITH. Counsel for the defendant would object to the Court's instructions to the jury, particularly [108] with the reading of the regulations of the Selective Service Universal Military Training Act, and to the failure of the Court to give defendant's proposed charge No. 1, which reads as follows:

"A registrant is entitled to full and fair disposition of his contentions at every level of the Selective Service System, and arbitrary and capricious denial of due process makes void an order of induction based thereon, citing U.S. vs. Peebles, 220 Fed. 114, and Atkins vs. The

United States, 204 Fed. 269, and United States vs. Coon, 153 Fed. Supp. 96."

The COURT. Ladies and Gentlemen of the jury, have you reached a verdict?

The FOREMAN. Yes, Your Honor.

The COURT. Pass it up, please. Read the verdict.

The CLERK. No. 30,439, United States of America vs. Raymond Joseph Duvernay, "We the jury find the de-[109]fendant guilty. Dated: August 30, 1966. Signed, John F. Cado, Foreman."

The CLERK. Ladies and Gentlemen of the Jury, is that your verdict?

The COURT. Let the defendant be seated. Do you wish to have the jury polled?

Mr. SMITH. No, I don't think so, Your Honor. I would like to move the Court for delay in sentencing, however, and ask that the defendant be released on his bond.

The COURT. Well, let the verdict be recorded. The jury may be excused, subject to call.

(Jury leaves the court room.)

The COURT. Mr. Smith?

Mr. SMITH. Your Honor, I would like to respectfully request that sentence be deferred for a period the Court thinks proper, and I would request that the defendant be released on his same bond.

[110] The COURT. Well, I am not going to continue him on his same bond.

Mr. SMITH. If the Court please, he has been out on bond all this while, and I have never had any difficulty in getting in touch with him. I am sure if Your Honor would release him under the same bond, he would be here for sentencing at whatever time the Court says. He is not going to leave town.

The COURT. He may now. He's not the same risk as he was before the trial. He stands convicted. I am going to deny his old bond and set a new bond at five thousand dollars, and he is not to be allowed to sign his own bond. All right, let him be remanded. Court will stand recessed.

MINUTE ENTRY:
August 30, 1966
CHRISTENBERRY, J.

Division "A"
Criminal No. 30439

[Title omitted in printing]

This cause came on this day for trial.

PRESENT: Gene S. Palmisano, Esq.
Louis B. Merhige, Esq.
Assistant U.S. Attorneys
Benjamin E. Smith, Esq.
Attorney for Defendant

All present and ready.

Counsel for defendant requested that the Jury panel be excluded from the Courtroom so that a preliminary matter might be taken up with the Court; same was GRANTED by the Court.

Counsel for defendant called for appearances of the witnesses who were issued Subpoenas Duces Tecum.

Witnesses were called and all answered present.

Counsel for defendant moved that these witnesses be separated; same was GRANTED by the Court. Witnesses were called and separated.

The following witness was called by the defendant for the purpose of protecting the record in regards to a former motion of defendant to quash:

Mrs. Cecile Calme, Sworn by Deputy Clerk.

With leave of Court, a stipulation was made by and between counsel for the defendant and the United States that the other witnesses would testify in accordance with Mrs. Calme's testimony, if they were called.

Jury panel returned into the Courtroom.

Jurors were called, and sworn on their Voir Dire and, being found acceptable, were sworn to try the case.

Jurors

Mrs. Pauline M. Parquet
Mrs. Diane M. Badock
Joseph H. Palmer
Mrs. Blanche E. Thomas
Mrs. Josephine C. Aiple

Harold J. Theard
Claude J. Landeche
Mrs. Estelle W. Brown
Mrs. Germaine Q. Gautreaux
Maurice P. Gaudet, III
Louis E. Capdevielle
John F. Cado

Counsel for defendant moved for the separation of all witnesses, and for the United States to supply the defendant with a copy of the defendant's file in this cause; same were GRANTED by the Court.

Balance of Jury panel was excused subject to call.

Witnesses were called, sworn by the Deputy Clerk, instructed by the Court, and excluded from the Courtroom.

United States addressed the Jury.

Counsel for Defendant addressed the Jury.

The following witnesses were called and testified on behalf of the United States:

Mrs. Cecile Calme, Recalled; Previously sworn.

Mr. and Mrs. Duvernay, parents of the defendant, were called, instructed by the Court, sworn by the Deputy Clerk, and excluded along with the other witnesses.

Court instructed the Jury not to discuss this case with anyone, etc., and excused the jury from the Courtroom.

United States orally moved to strike all testimony taken during the cross-examination of the witness, Mrs. Cecile Calme, and dictated the reasons into the record; same was OVERRULED by the Court.

Jury was called, and returned to the Jury box.

Testimony of the United States witnesses continued:

Specialist Philip J. Perkins, Previously sworn.

Lt. Keith Harrington, Previously sworn.

Lt. Ignatius J. Costa, Jr., Previously sworn.

United States rested.

United States orally moved for the production of the Local Board Minutes; United States objected to same.

IT IS ORDERED BY THE COURT that the objections of the United States to defendant's motion for the production of the Local Board Minutes be, and the same are hereby, OVERRULED, and the motion for production is GRANTED.

The following witnesses were called and testified on behalf of the defendant:

Raymond Joseph Duvernay, Sworn by Deputy Clerk.
Mrs. Raymond Duvernay, Previously sworn.
Florian J. Lizana, Previously sworn.
Roy J. Martin, Previously sworn.
Sidney A. Bozonier, Previously sworn.
Defendant rested.

The following witness was called to testify in rebuttal on behalf of the United States:

Col. Douglas Pritchett, Sworn by Deputy Clerk.
United States rested.
Argument.
Rebuttal.
Court charged and instructed the jury.
Jury retired to deliberate.

Jury returned from deliberation and rendered the following verdict:

"We, the Jury, find the defendant GUILTY

"Dated: August 30, 1966.

(Signed) JOHN F. CADO
Foreman"

Court ordered that the verdict be recorded.
Jury was excused subject to call.

Counsel for defendant orally moved to have Sentencing in this matter continued; same was GRANTED by the Court.

Counsel for defendant orally moved that defendant be released on his same bond; same was DENIED by the Court.

IT IS ORDERED that the new bond as to defendant, Raymond Joseph Duvernay, be, and the same is hereby, set in the amount of $5,000.00, and that defendant not be allowed to sign his own bond.

Defendant Duvernay was remanded.

In the United States District Court for the Eastern District of Louisiana, New Orleans Division

No. 30439 Division "A" Criminal Action

[Title omitted in printing]

[File endorsement omitted]

MOTION FOR NEW TRIAL—FILED SEPTEMBER 6, 1966

NOW INTO COURT, through undersigned counsel, comes the defendant herein, who moves pursuant to Rule 33 of the

Federal Rules of Civil Procedure for a new trial on the grounds that the record shows: That Negroes were systematically excluded from the nomination and appointment process designed to furnish members to Selective Service Local Board 42; that Selective Service Local Board 42 denied your defendant due process of law and acted in his case arbitrarily and capriciously in denying him the hardship exemption he sought and applied for.

WHEREFORE, defendant moves the Court for a new trial pursuant to Federal Rules of Civil Procedure Rule 33.

Respectfully submitted,

SMITH, WALTZER & JONES
Attorneys for Defendant
1006 Baronne Building
New Orleans, Louisiana 70112
/S/ BENJAMIN E. SMITH,
Trial Attorney.

[Certificate omitted in printing]

United States District Court for the Eastern District of Louisiana

United States of America v. Raymond Joseph Duvernay

No. 30439 Criminal Division "A"

Judgment and Commitment (Rev. 7–52) September 7, 1966

On this 7th day of September 1966, came the attorney for the government and the defendant appeared in person and [1] by Counsel, Mr. Benjamin E. Smith.

IT IS ADJUDGED that the defendant has been convicted upon a verdict of Guilty by Jury on August 30, 1966 of the offense of Violation of Title 50 App. USC 462, Selective Service Act as charged [3] in the Indictment and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] Five (5) Years.

IT IS ADJUDGED that [5]

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

HERBERT W. CHACOTENBERG,
United States District Judge.

The Court recommends commitment to: [6]

....,
Clerk.

In the United States District Court for the Eastern District of Louisiana, New Orleans Division

Criminal Action No. 30439

Division "A"

[Title omitted in printing]

[File endorsement omitted]

NOTICE OF APPEAL—FILED SEPTEMBER 6, 1966

NOW INTO COURT, through undersigned counsel, comes the defendant herein who shows to the Court:

1) That his name is Raymond Joseph DuVernay, that his address is 2006 Lapeyrouse Street, New Orleans, Louisiana.

2) That his attorney is Benjamin E. Smith of the firm of Smith, Waltzer & Jones at 305 Baronne Street, New Orleans, Louisiana.

3) That he was charged with violation of 50 App. USC, Section 462 and that he was convicted by a jury at a trial held on August 30, 1966; that he has not been sentenced, and that he is now free on bond in the amount of $5000.00.

4) That defendant-appellant is aggrieved of this verdict and feels that the law and evidence was in his favor and more particularly takes the position that the indictment was null and void inasmuch as the order for induction alleged to have been violated was in turn null and void, since same was issued by a Selective Service Board from which Negroes had been systematically excluded, and which Board acted arbitrarily and capriciously in violation of your defendant's rights to due process of law in refusing to consider or give proper hearing on defendant's applications for deferment.

WHEREFORE, defendant appeals from this verdict and judgment to United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

SMITH, WALTZER & JONES
Attorneys for Defendant
1006 Baronne Building
New Orleans, Louisiana 70112
/S/ BENJAMIN E. SMITH
Trial Attorney.

[Certificate omitted in printing]

In The United States Court of Appeals for the Fifth Circuit

No. 24132

RAYMOND JOSEPH DUVERNAY, APPELLANT,

versus

UNITED STATES OF AMERICA, APPELLEE.

Appeal from the United States District Court for the Eastern District of Louisiana.

Opinion—February 7, 1968.

Before MARIS,* THORNBERRY and AINSWORTH, Circuit Judges.

THORNBERRY, Circuit Judge: Raymond Joseph DuVernay, a twenty-two year old Negro from New Orleans, Louisiana, first registered with the Selective Service in 1964. He received a student deferment and remained in a student classification until the early part of 1966 when he left Louisiana State Uni-

*Of the Third Circuit, sitting by designation.

versity, New Orleans, which he had attended for one-half semester. He was reclassified I–A on January 19, 1966 by Local Board No. 42 in New Orleans. No administrative appeal was taken from the I–A classification. On April 13, 1966 he was ordered to report for induction on May 20, 1966. Subsequent to this order, he attempted to obtain first a student deferment, then a hardship deferment, and finally an occupational deferment.[1] The local board refused to grant him a personal appearance or to reopen the matter of his classification. His efforts to obtain a deferment having failed, he reported to the Induction Center on May 20 and informed the officers in charge that he would refuse to be inducted. The consequences of a refusal to be inducted were explained, but at the critical moment he declined to take the required one step forward. On August 30, 1966, he was convicted by a jury of violating the Universal Military Training and Service Act, 50 U.S.C. App. § 462, and was given a five-year sentence by the court.

On this appeal, DuVernay relies principally on the argument that the indictment against him should have been dismissed by the district court because Negroes have been systematically excluded from membership on Local Board No. 42. The Government stipulates that no Negroes have served on the local board for the last five years, and appellant accepts this stipulation as the factual basis for his argument. In addition to this contention, he alleges that he is entitled to a new trial because the local board's method of handling his case reflects a denial of due process. Finally, it is alleged that the trial judge committed reversible error when he refused to permit questions concerning the Ku Klux Klan affiliations of the man who was chairman of the board when appellant was classified I–A.

We affirm the conviction on the ground that all of appellant's contentions are foreclosed by his failure to exhaust administrative remedies. The Selective Service Regulations, 32 C.F.R. §§ 1602–1690 (1966), provide for appeal from a local board's determination of an individual's draft status. This appellate procedure is explained on the card bearing notice of classification and can be further elucidated by local-board personnel. There is no evidence that DuVernay was unfamiliar with this procedure or was incapable of understanding it. On the con-

[1] Appellant was employed by the Social Welfare Planning Council, an anti-poverty agency.

trary, the fact that he was able to correct an erroneous classification made by the board while he was still in high school indicates his awareness of the importance of taking immediate steps to correct a classification one believes to be erroneous. Yet, he made no effort to appeal his I–A classification until he received an order of induction. By this time he had waived his administrative remedies. Section 1624.1(a) of the regulations requires as a first step in the appellate process that a registrant file a written request for personal appearance before the board within ten days from the time the board mails a notice of classification. After the ten-day period has expired, there can be no personal appearance.[2] Since he waived his right to a personal appearance and his subsequent right to appeal, the only administrative avenue left open to appellant was a written request for reopening of classification based on facts not considered by the board when he was classified. This remedy is provided by Section 1625, but the board is powerless to reopen a classification after the order of induction has been mailed unless it specifically finds there has been a change in the registrant's status resulting from circumstances over which he had no control.[3] There is no evidence that DuVernay's status

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[2] 32 C.F.R. § 1624.1(a) provides as follows:

Every registrant after his classification is determined by the local board, except a classification which is determined upon an appearance before the local board under the provisions of this part, shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (SSS Form No. 110) to him. Such 10-day period may not be extended.

[3] 32 C.F.R. § 1625.2 provides as follows:

The local board may reopen and consider anew the classification of a registrant (a) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (b) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction . . . unless the local board first specifically find there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

changed in this way after the order of induction was mailed. Thus, the mailing of the order of induction extinguished his last right of administrative appeal before he had even begun to challenge his I–A classification.

When a registrant believes he is entitled to a fair hearing on the matter of his classification, he may appear personally before the local board and thereafter may carry his case to a board of appeal and, under certain circumstances, to the President. Only when he has resorted to these administrative remedies within the prescribed time limits, has been ordered by his board to report for induction, and has obeyed that order, are the doors of the courts open to him to test the legality of his classification. *Falbo v. United States,* 1944, 320 U.S. 549, 64 S.Ct. 346, 88 L.Ed. 305; *Barnes v. United States,* 5th Cir. 1967, No. 24745, December 14, 1967; *Thompson v. United States,* 10th Cir. 1967, 380 F.2d 86; *Woo v. United States,* 9th Cir. 1965, 350 F.2d 992; *Badger v. United States,* 9th Cir. 1963, 322 F.2d 902, *cert. denied,* 1964, 376 U.S. 914, 84 S.Ct. 669, 11 L.Ed.2d 610; *Frank v. United States,* 9th Cir. 1956, 236 F.2d 39; *Skinner v. United States,* 9th Cir. 1954, 215 F.2d 767, *cert. denied,* 1955, 348 U.S. 981, 75 S.Ct. 572, 99 L.Ed. 763; *Van Bibber v. United States,* 8th Cir. 1945, 151 F.2d 444. Moreover, a registrant cannot escape the requirement that administrative remedies be exhausted by complaining, as appellant does, of a lack of due process in his local-board classification. *Evans v. United States,* 9th Cir. 1958, 252 F.2d 509; *United States v. Garth,* M.D. Alabama 1964, 239 F. Supp. 164. Since appellant failed to take administrative steps available to him before attempting a collateral attack on his classification in a prosecution for refusing to submit to induction, his contentions before this Court are foreclosed as a matter of law.[4]

It is true that in *Wolff v. Selective Service Board No. 16,* 2d Cir. 1967, 372 F.2d 817, the Second Circuit intervened in behalf of the registrants before administrative remedies had been exhausted because first-amendment rights of free speech and free assembly were at stake. The local board had reclassified the

[4] Some courts have said that the rule requiring exhaustion of administrative remedies can be relaxed under extenuating circumstances. *See, e.g., Donato v. United States,* 9th Cir. 1962, 302 F.2d 468. No such circumstances have been demonstrated in this case.

registrants from student-deferred to I–A because of their participation in demonstrations protesting American involvement in Viet Nam. While acknowledging the general rule that administrative remedies must be exhausted in a selective service case, the court focused on three separate factors compelling immediate judicial relief for the registrants. First, it said that first-amendment rights are not involved in the normal case, whereas in the case at bar, the very fact of the reclassification operated to curtail the exercise of these rights. Since the reclassification by the local board undoubtedly had a chilling effect on the exercise of free speech, immediate judicial action was justified. Second, it said that the registrants should not be required to perform a futile task. They were part of a larger group of demonstrators, some of whom had already appealed their reclassifications without success. The policy of local and appellate boards with respect to student demonstrators having been clearly established, it would be useless to require the appellants to exhaust administrative remedies. Finally, the court cited authority for the proposition that judicial intervention may occur at any time when a local board "acts in flagrant disregard of the applicable regulations and thus in clear excess of its jurisdiction." 372 F.2d, at 826.

Taking these three factors into account, we find no basis for departing from the general rule in the instant case. It is apparent that DuVernay was not reclassified as a penalty for exercising first-amendment rights, and it is equally apparent that it would not have been a futile gesture for him to exhaust administrative remedies. The record reveals that he always received a student classification upon timely request; and there is no reason to believe that the local board, or at least the appeal board, would not have granted another deferment if legitimate reasons had been presented within the prescribed time limits. The fact is that under the regulations, the board had no alternative but to reclassify appellant as I–A: He had dropped out of school, and his file presented no other basis for a deferment. We might add that his I–A status was determined at a time when the board had no way of knowing his race. That is, at the time of classification, there was no way of determining DuVernay's race from his file. Thus, we conclude that the board acted in accordance with the regulations. We further conclude

that appellant could have obtained a deferment subsequent to his reclassification if he had taken the appropriate steps and given appropriate reasons.

Though we do not believe the reasoning of *Wolff* is applicable to the instant case, we are moved to express doubt as to the continuing validity of that decision. Congress amended 50 U.S.C. App. § 460(b)(3) in 1967, several months after the decision in *Wolff*, in such a way as to emphasize that exhaustion of administrative remedies is a prerequisite to judicial review:

> No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under section 12 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction, or for civilian work in the case of a registrant determined to be opposed to participation in war in any form: *Provided*, That such review shall go to the question of the jurisdiction herein reserved to local boards, appeal boards, and the President only when there is no basis in fact for the classification assigned to such registrant.

The purpose of the amendment is revealed by legislative history:

> The committee was disturbed by the apparent inclination of some courts to review the classification action of local or appeal boards before the registrant had exhausted his administrative remedies. Existing law quite clearly precludes such a judicial review until after a registrant has been ordered to report for induction and has responded either affirmatively or negatively to such an order. In view of this inclination of the courts to prematurely inquire into the classification action of local boards, the committee has rewritten this provision of the law so as to more clearly enunciate this principle. The committee was prompted to take this action since continued disregard of this principle of the law by various courts could seriously affect the administration of the Selective Service System.

H.R. Rep. No. 267, 90th Cong., 1st Sess 30–31, 7 U.S. Code Congressional and Administrative News 1464, 1489 (1967). Faced with a factual situation almost identical to the one in *Wolff*, a district court recently held that the new amendment and its legislative history preclude judicial review before administrative remedies have been exhausted. *Carpenter v. Hendrix*, 36 U.S.L.W. 2349 (N.D. Ga. December 19, 1967).[5]

In summary, we hold that the arguments advanced by appellant go to the legality of his classification and that this matter is foreclosed by his failure to exhaust administrative remedies. Even if there can be exceptions to this general requirement, which we doubt, we find no basis for making an exception to it in this case. The judgment of the district court is

AFFIRMED.[6]

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[5] In *United States v. Lybrand*, 36 U.S.L.W. 2373 (E.D. N.Y. January 2, 1968), a district court recently held that the new amendment does not foreclose the power of courts to consider—in a criminal prosecution for refusal to submit to induction or report for civilian work—jurisdictional errors other than those pertaining to classification. This holding would not appear to be inconsistent with the statute.

[6] We note in passing that there is at least one problem with appellant's attack on the racial composition of his local draft board. Draft board members are public officers under authority derived from the President. In challenging the racial composition of the board, appellant indirectly challenges the qualifications of the present members and their eligibility to perform their duties. The general rule is that where one is a public officer under color and authority derived either from election or appointment, however irregular or informal, and where he discharges his duties in behalf of the public or in public interests, his qualifications are not subject to collateral attack, as in this criminal proceeding, but must be challenged by direct attack. *Ex parte Ward*, 1899, 173 U.S. 452, 19 S.Ct. 459, 43 L.Ed. 765; *Jessen v. United States*, 10th Cir. 1957, 242 F.2d 213; *United States ex rel. Doss v. Lindsley*, 7th Cir. 1945, 148 F.2d 22; *United States ex rel. Watkins v. Pennsylvania*, W.D. Pa. 1963, 214 F. Supp. 913. In *United States v. Richmond*, C.D. Calif. 1967, 274 F. Supp. 43, also a criminal prosecution for refusal to submit to induction, the district court held that this rule barred a collateral attack on the racial composition of the defendant's local draft board.

In the United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1967

No. 24132

D.C. Docket No. CR 30439 "A"

RAYMOND JOSEPH DUVERNAY, APPELLANT,

versus

UNITED STATES OF AMERICA, APPELLEE.

Appeal from the United States District Court for the Eastern District of Louisiana

Before MARIS,* THORNBERRY and AINSWORTH, Circuit Judges.

JUDGMENT—FEBRUARY 7, 1968

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

In the United States Court of Appeals for the Fifth Circuit

No. 24132

[Title omitted in printing]

[File endorsement omitted]

Appeal from the United States District Court for the Eastern District of Louisiana

MOTION FOR REHEARING—FILED MARCH 26, 1968

AND NOW INTO COURT, through undersigned counsel, comes Raymond Joseph DuVernay, defendant below and now

*Of the Third Circuit, sitting by designation.

appellant, who shows to the Court that the Court's decision and opinion affirming his conviction of February 7, 1968 is contrary to the law and evidence and that there should be granted a re-hearing or a hearing en banc reversing the decision of the Court and either modifying or overturning the opinion in support of said decision affirming said conviction.

SMITH, SCHEUERMANN & JONES
Attorneys for Appellant
1006 Baronne Building
New Orleans, Louisiana
Phone: 525-4361
/S/ BENJAMIN E. SMITH

[Certificate omitted in printing]

In the United States Court of Appeals for the Fifth Circuit

No. 24132

[Title omitted]

[Filed endorsement omitted]

Appeal from the United States District Court for the Eastern District of Louisiana

OPINION DENYING ON PETITION FOR REHEARING EN BANC—MAY 14, 1968

Before MARIS,* THORNBERRY and AINSWORTH, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 25(a), subpar. (b), the Petition for Rehearing En Banc is DENIED.

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*Of the Third Circuit, Sitting by Designation.

GOVERNMENT'S EXHIBIT 4 (EXCERPT)

1438 SAINT ANTHONY STREET,
New Orleans, La.,
August 2, 1964.

LOCAL BOARD NO. 42,
701 Loyola Street,
New Orleans, La. 70113

GENTLEMEN: I request a personal appearance before the local board to discuss the changeing of my classification from I–S–H to I–A. My Selective Service No. is 16,42,46,32.

I am still attending school, and can produce written or personal proof of my school attendance.

Respectfully Yours,

RAYMOND J. DUVERNAY.

GOVERNMENT'S EXHIBIT 4 (EXCERPT)

AUGUST 4, 1964.

RAYMOND J. DUVERNAY,
1438 St. Anthony St.,
New Orleans, La.

DEAR SIR: In answer to your letter of August 2, 1964 requesting an appearance before the board to discuss the changing of your classification from 1–S–H to 1–A, also advising that you are still attending school.

On June 19, 1964 you were mailed a "current information Questionnaire" and written in "red" in the center of the form was the following.

"Series V–Education must be completed fully, as it is important for further deferment as a student."

You completed in the above series, line 1 and 2, you did not *complete* 3, so we assumed that you were no longer a student. Since you failed to affix your signature to the form, I am returning same to you, also complete *line 3* and your problem will be solved. May I also advise you at this time, when you enroll in high school in September you will have to have the school submit verification of your enrollment.

Yours truly,

CECILE S. CALMES,
Clerk, Local Board No. 42,
(By Direction of the Board).

DUVERNAY 7

Selective Service System, Minutes of Local Board Meeting,

Date of this meeting: January 19, 1966.
Hour this meeting convened: 7:00 p.m.
Date of last meeting: November 17, 1965.
Names of members present: Mr. Jack Helm, Chairman, Mr. Sidney A. Bozonier, Secy., Mr. F. J. Lizana, Mr. Richard A. Audler, Mr. Roy J. Martin, Members.
Minutes of previous meeting read, approved and signed.
The classifications of 584 registrants, listed on the continuation sheet of this form, were determined by a majority vote of the local board.
Other local board minutes:
Request for an occupation deferment filed by the Department Police in behalf of Harold W. Gervais, 16–42–43–49 was given consideration by the board. Request was granted, classification re-opened and registrant classified 2–A. Both registrant and the Department of Police was notified of the board's action.
The board reviewed information submitted by the New Orleans Regional Mental Health Center relative to an occupational deferment for John V. Cabibi, 16–42–42–437. Registrant's classification was not re-opened and employer notified of board's action.
The board removed the delinquency on the following registrants. Ronald L. Fernandez, 16–42–44–370, Leonard J. Hamilton, 16–42–45–601, Sylvester Marshall, 16–42–45–541.

GOVERNMENT'S EXHIBIT 4 (EXCERPT)

SELECTIVE SERVICE SYSTEM—MINUTES OF ACTION—CONTINUATION SHEET

Name of Registrant or Standby Reservist: Raymond Joseph DuVernay.
SS or SR Number 16–42–46–32

Dates	Minutes of actions	Vote	
		Yes	No
April 27, 1966	Information submitted by registrant and his mother as of 4–27–66 reviewed and classification not reopened. S. Bozonier.	4	0
May 23, 1966	Classification reviewed and not reopened. S.B	3	0

Registrants Robert Lee Weems, 16–42–47–703, Richard Allen Gowell, 16–42–47–706, Johnnie Coleman, 16–42–47–758, Earl John Thonn, Jr. 16–42–47–824 was classified 1–Y under Adm. Cir. 502.12.

Registrants Morris R. Caldwell, 16–42–46–312, David A. Bybee 16–42–47–624 were classified 1–Y by the local board for physical reasons.

Registrant Clifford McMillian, Jr. 16–42–47–827 was classified 4–F by the local board for physical reasons.

The board cancelled the registration of Henry W. Kinney, 111, 16–42–47–757 under SSR 1619.13.

Registrants Jerome R. Turner, 16–42–47–2, Michael D. Winter, 16–42–43–443 were classified "deceased" by the local board.

The military file of Douglas L. Ealy, 16–42–44–337, US 54–362–709 was placed before the board for review. Information reviewed and it was the recommendation of the board that registrant be retained in service.

The board reviewed Adm. Cir. 502.11 and Hq. Memorandum No. 253.

There being no further business, meeting adjourned.

Hour adjourned: 10:00 p.m.

_____ _____,

(Signature of Local Board Member)

COUNSEL'S NOTE: "There follow 25 sheets containing 584 names of registrants whose classifications were considered at said meeting. In each instance the vote was 5–0. DuVernay's name appears on page 10 thereof with the notation of re-classification from 2–S to 1–A by vote of 5–0."

DUVERNAY 5

Selective Service System, Report of Oral Information

Selective Service or Standby Reserve No. 16–42–46–32

Information received by personal visit.

1. Name (last, first, middle): Duvernay, Raymond Joseph.

2. Date of birth: 1–20–46.

3. Present mailing address: 2006 Lapeyrouse St., New Orleans, La.

4. New information (marriage, employment, dependency; death of registrant, reservist, or claimed dependent): 4–15–66.

Registrant came into the office relative to his receiving an induction order. Said he wanted a deferment on the grounds that

he was planning on going back to college in September 1966. He was advised in order to be deferred he would have to be presently enrolled in school. He then advised that he had charges pending against him in court and I advised him that in March 1966 he was processed for A.F.P.E. and found to be fully acceptable, that he should have revealed these pending charges to the Induction Station and to his local board. He stated he did advise them at the induction station—but that had nothing to do with his being found acceptable, as he was acceptable on mental and physical reasons. He was very belligerent, and in trying to determine what charge or charges were pending in the court against him, he stated he was arrested in October 1963 for being loud and boisterous at a Civil Rights Rally, said he never heard anything from anybody (he was referring to this charge) so he didn't know if it was still pending. He also advised there were no other charges (court) other than this one. He was then advised it would be up to him to produce evidence relative to this charge since the information he furnished was so vague. He said he would try and find out and then left the office.

5. Source of information: Registrant.

_____ _____,

Clerk, Local Board No. 420.

Date: 4–15–66.

DUVERNAY 1

Selective Service System, Report of Oral Information

Selective Service or Standby Reserve No. 16–42–46–32.

Information Received by Personal Visit.

1. Name (Last, first, middle): Duvernay, Raymond Joseph.
2. Date of birth: 1–20–46.
3. Present mailing address: 2006 Lapeyrouse St.
4. New information (marriage, employment, dependency; death of registrant, reservist, or claimed dependent): April 25, 1966.

Mrs. Duvernay, mother of registrant Raymond Duvernay reported to the board relative to an induction order her son received, scheduled date of May 20, 1966. I advised Mrs. Duvernay that her son Raymond had reported to the board relative to the same matter—and requested a deferment because he planned to go back to school in September. While she was in the office she submitted the following information. Graduated

from high school in June 1965, enrolled in LSUNO in September 1965 and resigned in December 1965. She advised his godmother paid his tuition. She further claimed he started working with the Housing Authority in January 1966 (maintenance) salary $215.00 per month and claimed he gave her $25.00 per week. Removed himself from that job and started working at the Welfare Planning Council, 211 Camp Street, salary $275.00 per month, has had one pay period, gets paid every two weeks and mother claims he gave her $70.00 for two weeks. Registrant does not reside with his mother, lives with his grandmother at 2006 Lapeyrouse Street, has been living with grandmother over a year—although mother claims it is only temporary. Mother employed at Charity Hospital, Laundry Department, salary $195.00 per month. Has other children ages, 9, 11, 12, 14, 16, 17. The 17 year old stays at home. Mrs. Duvernay states that she has not lived with her husband in four years, does not receive any other income except her salary, however her inlaws help her out sometimes—when they feel like it. She does not know the whereabouts of her husband and neither does her inlaws know his whereabouts. States she pays $55.00 a month rent.

I advised Mrs. Duvernay that I would submit this information to the board and also the information submitted by her son for board action, on the date of the meeting which was not definite at this time.

5. Source of information: Relative.

6. Name and address of person furnishing information, other than registrant: Mrs. Shirley Duvernay (mother).

Clerk, Local Board No. 42.

Date: 4–25–66.

DUVERNAY 8

Selective Service System, Minutes of Local Board Meeting

Date of meeting: April 27, 1966.

Hour this meeting convened: 7:00 p.m.

Date of last meeting: March 23, 1966.

Names of members present: F. J. Lizana, Acting Chairman, Sidney A. Bozonier, Secy., Roy J. Martin, Richard A. Audler, Members.

Minutes of previous meeting read, approved and signed.

The classifications of 234 registrants, listed on the continuation sheet of this form, were determined by a majority vote of the local board.

Other local board minutes:

The file of Sidney E. Wiltz, 111–16–42–44–394 was placed before the board for consideration of an apprentice classification, relative to the filing of SSS Form 171. Under the provisions of SSR 1622.22 registrant's classification was reopened and classified 2–A (App.) The Apprentice Committee was notified of the board's action.

Board action was taken on the files of John H. Haslauer, 16–42–40–407 and Leo Paul Purcell, 16–42–43–183 for further consideration of their 3–A classification based on hardship. Current information filed was considered by the board and it was the board's opinion that the hardships still existed and further deferment was granted.

Request for an occupational deferment submitted by The Union Carbide Corporation on Terry J. Hiserodt 16–42–43–565, employed as a mechanical engineer was reviewed and given consideration by the board. Registrant's classification was reopened and classified 2–A, thereby advising the Union Carbide Corporation of the board's action on their request.

Request for deferment filed by the Department of Police in behalf of William T. Roth, 16–42–45–214, scheduled for induction and presently in attendance at the Police Academy was acted on by the board. The board concurred in granting the deferment, thereby requesting the State Director to cancel registrant's induction. The board's attention was called to the submission of Form PC–243 (Request for deferment or waiver for Peace Corps Service) on registrant Donald R. Dicken, 16–42–42–457 to begin training on June 1966 and presently classified in 2–A to expire 9–23–66. This 2–A was based on a request by The General Electric Corporation as registrant being essentially employed in the Flight Propulsion Division. The board carefully reviewed contents of the file and in view of the above, it was their opinion that registrant should be notified, that should he remove the reason for which he was granted a deferment, that the board would have no alternative but to classify him in a class available for service. Copy of letter to General Electric and a request to General Electric to advise the board immediately, should registrant leave their employ.

Registrant Carl L. Coste, 16–42–48–199 was classified 1–Y by the board under Adm. Cir. 502.12.

Registrant Rodney Atlow, 16–4248–97 was classified 4–F by the board for mental reasons.

Registrant Paul J. Tircuit, III was classified 4–F by the board for physical reasons.

The delinquency status of Eugene Grady, 16–42–47–70 was removed by the board.

At the request of Mr. Raymond Molony, the board submitted the names of Mr. Robert Schedler and Mr. George J. Gasperecy as potential board members.

There being no further business, meeting adjourned.

Hour adjourned: 10:25 p.m.

_____

(Signature of Local Board Member).

COUNSEL'S NOTE: "There follow 10 sheets containing 234 names of registrants whose classifications were considered at said meeting. In each instance the vote was 4–0. DuVernay's name does not appear anywhere in these official Board minutes."

DuVernay 4

April 28, 1966.

Raymond Joseph DuVernay,
2006 Lapeyrouse St.,
New Orleans, La.

Dear Sir: At the board meeting held on April 27, 1966, the information submitted by you and your mother was given careful consideration.

It is the opinion of the Local Board that you should report for induction, as ordered, on May 20, 1966.

Yours truly,

Cecile S. Calmes,
Clerk, Local Board No. 42
(By Direction of the Board).

DuVernay 2

Selective Service System, Report of Oral Information

Selective Service or Standby Reserve No.—16–42–46–32.
Information received by personal visit.

1. Name (Last, first, middle): DuVernay, Raymond Joseph.
2. Date of birth: Jan. 20, 1946.

3. Present mailing address: 2006 Lapeyrouse St., New Orleans, La.

4. New information (marriage, employment, dependency; death of registrant, reservist, or claimed dependent):

Mother and son came in and stated that they wanted to appeal the board's decision.

The registrant said he was told by his lawyer that he could appeal to the Appeal Board and to the President. I explained to him an appeal and appearance is taken or applied for within 10 days after his notice of classification is mailed, and he was mailed his notice on Jan. 20, 1966.

If he had taken the appeal at that time his file would have been forwarded to the Appeal Board, and if there was a dissenting vote he could then appeal to the President, but that it was too late now.

Then they said that they wanted to appear. I told them the same regulation applied to the appearance as it did to the appeal within ten days after the notice 110 was mailed.

Then they said they wanted to speak to someone higher in authority than the Local Board. They were told to contact the Local Board clerk in the morning to discuss with her any information with regard to his status.

5. Source of information: Registrant and relative.

PAULINE H. MURPHY,
Relief Clerk.

Date: May 11, 1966.

DUVERNAY 3

SOCIAL WELFARE PLANNING COUNCIL,
New Orleans, La., May 12, 1966.

LOCAL DRAFT BOARD No. 42,
701 Loyola Avenue,
New Orleans, La. 70112

DEAR SIR: It has come to our attention that Mr. Raymond DuVernay, 2006 Lapeyrouse Street, is being called for the draft. Mr. DuVernay is employed by this agency as a community worker and in that capacity is working in the Lower Ninth Ward Anti-Poverty Target area.

It is the purpose of this letter to strongly urge that his draft board permit deferment so that he will be able to continue on

the assignment of important community services in that area. The anti-poverty program is being carried out under the National Economic Opportunity legislation and has particular significance in the Lower Ninth Ward, the section of the city so seriously affected by Hurricane Betsy.

The work of Mr. DuVernay is directly related to improving community conditions and his being called to active duty in the armed forces at this time will represent a serious obstacle in this important undertaking.

It is our sincere hope that his draft board will give favorable consideration to this request that a deferment be granted.

Very sincerely yours,

ALBERT G. ROSENBERG,
Associate Executive Director.

DUVERNAY 6

MAY 16, 1966.

Re: DuVernay, Raymond Joseph, SS No. 16-42-46-32.
SOCIAL WELFARE PLANNING COUNCIL,
7th Floor, 211 Camp Street,
New Orleans, La. 70130
(Att: Albert G. Rosenberg Associate Executive Director)

GENTLEMEN. This is to advise that your request dated May 12, 1966 for an occupational deferment on the above named registrant was reviewed and given consideration by the board.

The board wishes to advise that your request has not been granted and registrant is to report for induction as ordered on May 20, 1966.

Very truly yours,

CECILE S. CALMES,
Clerk, Local Board No. 42,
(By Direction of the Board).

DUVERNAY 9

Selective Service System, Minutes of Local Board Meeting

Date of this meeting: May 23, 1966.
Hour this meeting convened: 7:00 p.m.
Date of last meeting: April 27, 1966.
Names of members present: Mr. F. J. Lizana, Acting Chairman; Sidney A. Bozonier, Secy.; Mr. Roy J. Martin.

Minutes of previous meeting read, approved and signed.

The classifications of 200 registrants, listed on the continuation sheet of this form, were determined by a majority vote of the local board.

Other local board minutes:

Board action was taken on the file of Clement C. Andollina, 16–42–40–299 for further consideration of his 3–A classification based on hardship. Current information filed by registrant was reviewed by the board and it was the board's opinion that registrant's hardship still existed and further deferment granted.

Consideration was also given a request submitted by St. Augustine High School in behalf of Paul O. Beaulieu, 16–42–43–238 for further deferment of his 2–S classification, which was granted by the board.

The board declared the following registrants delinquent: James Scott Breath, 16–42–43–257—Arthur Moret 16–42–47–432.

The file of Lawrence DeBarros, 16–42–45–158 was placed before the board for removal of his delinquency.

George Milanez, Jr., 16–42–48–214 and Daniel Edward Willis, 16–42–48–209 were classified 4–F by the board for physical reasons.

Mr. F. J. Lizana who has been serving in the capacity of acting chairman of the board was elected permanent chairman at this meeting.

The members were advised of the selection of Mr. George J. Gasperecy as a member of the board.

Col. Davis visited with the board members. His visits and help is always appreciated.

There being no further business, meeting adjourned.

Hour adjourned: 10:00 p.m.

_____ _____

(Signature of Local Board Member).

COUNSEL'S NOTE: "There follow 9 sheets containing 200 names of registrants whose classifications were considered at said meeting. In each instance the vote was 3–0. DuVernay's name does not appear anywhere in these official Board minutes."

Supreme Court of the United States

OCTOBER TERM 1968

No. 442 Misc.

RAYMOND JOSEPH DUVERNAY, PETITIONER,

v.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 814 and placed on the summary calendar. The case is set for oral argument immediately following No. 403.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

DECEMBER 9, 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1969